

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; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION FOR THE LEGISLATIVE BRANCH OF STATE GOVERNMENT. The funds provided in this section, or so much 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, 2005, as follows:

Subdivision 1.

FIFTY-EIGHTH AND FIFTY-NINTH LEGISLATIVE ASSEMBLIES AND BIENNIUM	
Salaries and wages	\$5,482,878
Operating expenses	2,904,850
Capital assets	6,000
National conference of state legislatures	<u>167,524</u>
Total general fund appropriation	\$8,561,252

Subdivision 2.

LEGISLATIVE COUNCIL

Salaries and wages	\$4,916,029
Operating expenses	2,184,827
Capital assets	<u>27,000</u>
Total general fund appropriation	\$7,127,856
Grand total general fund appropriation	\$15,689,108

SECTION 2. 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 fifty-eighth and fifty-ninth 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 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved May 2, 2003
Filed May 2, 2003

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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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, 2003, and ending June 30, 2005, as follows:

Subdivision 1.

SUPREME COURT

Salaries and wages	\$5,847,592
Operating expenses	1,652,809
Judges retirement	<u>132,288</u>
Total general fund appropriation	\$7,632,689

Subdivision 2.

DISTRICT COURTS

Salaries and wages	\$33,913,180
Operating expenses	13,998,950
Capital assets	74,500
Judges retirement	826,944
UND-Central legal research	80,000
Alternative dispute resolution	<u>20,000</u>
Total all funds	\$48,913,574
Less estimated income	<u>1,762,735</u>
Total general fund appropriation	\$47,150,839

Subdivision 3.

JUDICIAL CONDUCT COMMISSION AND DISCIPLINARY BOARD

Judicial conduct commission and disciplinary board	\$538,643
Total all funds	\$538,643
Less estimated income	<u>280,801</u>
Total general fund appropriation	\$257,842
Grand total general fund appropriation	\$55,041,370
Grand total other funds appropriation	\$2,043,536
Grand total all funds appropriation	\$57,084,906

SECTION 2. 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, 2003, and ending June 30, 2005.

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

Approved May 2, 2003

Filed May 2, 2003

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 authorize the state board of higher education to issue and sell bonds for capital projects; to authorize the industrial commission to issue and sell bonds for capital projects; to provide statements of legislative intent; to provide for a general fund transfer; to provide for a legislative council study; to provide an exemption; to create and enact section 4 to House Bill No. 1023, as approved by the fifty-eighth legislative assembly, relating to capital projects of various state departments and to declare that Act an emergency; to amend and reenact sections 15-10-08, 15-10-12, 54-44.1-04, 54-44.1-06, and 54-44.1-11 of the North Dakota Century Code, relating to compensation of state board of higher education members, higher education institutions' special revenue funds, budget requests and block grant appropriations, and unexpended appropriations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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 North Dakota university system office and to the various entities and institutions under the supervision of the board of higher education for the purpose of defraying the expenses of those entities and institutions, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Subdivision 1.

NORTH DAKOTA UNIVERSITY SYSTEM OFFICE

Capital assets	\$12,790,689
Competitive research	4,750,000
Centers for excellence	1,550,000
Board initiatives	485,306
System governance	4,472,850
Title II	695,600
Technology pool	25,089,639
Operations pool	578,417
Contingency and capital emergency	1,752,767
Professional liability insurance	1,850,000
Student financial assistance grants	2,930,215
Professional student exchange program	1,678,300
Scholars program	816,368
Native American scholarships	204,086
Education incentive programs	830,000
Total all funds	<u>\$60,474,237</u>
Less estimated income	<u>3,855,507</u>
Total general fund appropriation	<u>\$56,618,730</u>

Subdivision 2.		
	BISMARCK STATE COLLEGE	
Capital assets		\$250,000
Operations		<u>16,112,327</u>
General fund appropriation		\$16,362,327
Subdivision 3.		
	LAKE REGION STATE COLLEGE	
Capital assets		\$44,831
Operations		<u>5,032,682</u>
General fund appropriation		\$5,077,513
Subdivision 4.		
	WILLISTON STATE COLLEGE	
Capital assets		\$88,790
Operations		<u>5,387,371</u>
General fund appropriation		\$5,476,161
Subdivision 5.		
	UNIVERSITY OF NORTH DAKOTA	
Capital assets		\$32,662,136
Operations		<u>84,558,126</u>
Total all funds		\$117,220,262
Less estimated income		<u>30,300,000</u>
General fund appropriation		\$86,920,262
Subdivision 6.		
	NORTH DAKOTA STATE UNIVERSITY	
Capital assets		\$16,737,531
Operations		<u>67,576,959</u>
Total all funds		\$84,314,490
Less estimated income		<u>15,000,000</u>
General fund appropriation		\$69,314,490
Subdivision 7.		
	NORTH DAKOTA STATE COLLEGE OF SCIENCE	
Capital assets		\$4,442,420
Operations		<u>23,936,824</u>
Total all funds		\$28,379,244
Less estimated income		<u>3,668,920</u>
General fund appropriation		\$24,710,324
Subdivision 8.		
	DICKINSON STATE UNIVERSITY	
Capital assets		\$5,393,962
Operations		<u>13,598,831</u>
Total all funds		\$18,992,793
Less estimated income		<u>5,000,000</u>
General fund appropriation		\$13,992,793
Subdivision 9.		
	MAYVILLE STATE UNIVERSITY	
Capital assets		\$414,589
Operations		<u>8,602,335</u>
Total all funds		\$9,016,924

Less estimated income		<u>150,000</u>
General fund appropriation		\$8,866,924
Subdivision 10.		
	MINOT STATE UNIVERSITY	
Capital assets		\$612,850
Operations		<u>25,769,578</u>
General fund appropriation		\$26,382,428
Subdivision 11.		
	VALLEY CITY STATE UNIVERSITY	
Capital assets		\$265,334
Operations		<u>11,304,672</u>
General fund appropriation		\$11,570,006
Subdivision 12.		
	MINOT STATE UNIVERSITY - BOTTINEAU	
Capital assets		\$209,663
Operations		<u>4,102,856</u>
General fund appropriation		\$4,312,519
Subdivision 13.		
	UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES	
Operations		<u>\$30,165,865</u>
General fund appropriation		\$30,165,865
Subdivision 14.		
	NORTH DAKOTA FOREST SERVICE	
Capital assets		\$146,061
Operations		<u>2,715,016</u>
Total all funds		\$2,861,077
Less estimated income		<u>1,090,001</u>
Total general fund appropriation		\$1,771,076
Grand total general fund appropriation H.B. 1003		\$361,541,418
Grand total estimated income appropriation H.B. 1003		\$110,546,775
Grand total all funds appropriation H.B. 1003		\$472,088,193

SECTION 2. BOARD INITIATIVES. The sum of \$485,306, or so much of the sum as may be necessary, included in the board initiatives line item in subdivision 1 of section 1 of this Act, must be used to support university system and statewide goals linked to the state board of higher education strategic plan and the higher education roundtable report, as determined by the board.

SECTION 3. CAPITAL ASSETS. The sum of \$12,790,689, or so much of the sum as may be necessary, included in the capital assets line item in subdivision 1 of section 1 of this Act, must be used by the state board of higher education to satisfy outstanding bond obligations.

SECTION 4. TECHNOLOGY POOL. The sum of \$25,089,639, or so much of the sum as may be necessary, included in the technology pool line item in subdivision 1 of section 1 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. Technology funding allocations must be made based on historic funding and the North Dakota university system information technology plan. 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, and other related technology initiatives as determined by the board.

SECTION 5. OPERATIONS POOL. The sum of \$578,417, or so much of the sum as may be necessary, included in the operations pool in item in subdivision 1 of section 1 of this Act, is to be allocated by the state board of higher education to the entities included in section 1.

SECTION 6. CONTINGENCY AND CAPITAL EMERGENCY. The sum of \$296,693, or so much of the sum as may be necessary, included in the contingency and capital emergency line item in subdivision 1 of section 1 of this Act, must be used to meet unforeseen operations or capital asset needs and opportunities, as determined by the state board of higher education, at institutions and entities under the control of the board.

SECTION 7. FEDERAL, PRIVATE, AND OTHER FUNDS - APPROPRIATION. All funds, in addition to those appropriated in section 1 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, 2003, and ending June 30, 2005. All additional funds received under the North Dakota-Minnesota reciprocity agreement during the biennium beginning July 1, 2003, and ending June 30, 2005, are appropriated to the state board of higher education for reimbursement to institutions under the control of the board and for student financial assistance grants. Twenty-two percent of the additional funds must be used for student financial assistance grants for students at private baccalaureate degree-granting institutions.

SECTION 8. EXEMPTION. The appropriations contained in section 1 of chapter 28 of the 2001 Session Laws are not subject to the provisions of section 54-44.1-11.

SECTION 9. UNEXPENDED GENERAL FUND - EXCESS INCOME. Any unexpended general fund appropriation authority to and any excess income received by the institutions and entities under the control of the state board of higher education 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, 2005, and ending June 30, 2007.

SECTION 10. 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 2005-07 biennium budget request.

SECTION 11. STATE FORESTER RESERVE ACCOUNT - BUDGET SECTION APPROVAL. The estimated income line item in subdivision 2 of section 1 of this Act includes the sum of \$115,000 from the state forester reserve account, established pursuant to section 4-19-01.2, for construction of equipment and supply storage buildings in Towner and Bottineau. After receiving approval from the budget section, the forest service may obtain and utilize any additional funds, which are appropriated for the biennium beginning July 1, 2003, and ending June 30, 2005, to assist in the construction of the equipment and supply storage buildings.

SECTION 12. WATER DEVELOPMENT TRUST FUND. Notwithstanding section 54-27-25, the sum of \$1,456,074, or so much of the sum as may be necessary, included in the contingency and capital emergency line item in subdivision 1 of section 1 of this Act, is from the water development trust fund and may be spent by the state board of higher education for disaster response costs, during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 13. BOND ISSUANCE AUTHORIZATION - PURPOSES - APPROPRIATION. The state board of higher education, in accordance with chapter 15-55, may arrange for the funding of the 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, 2005. 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 the indebtedness. The evidences of indebtedness may be issued, and the proceeds are appropriated, for the biennium beginning July 1, 2003, and ending June 30, 2005, for the purpose of financing the following capital projects:

Bismarck state college - Student apartments	\$1,785,000
Lake region state college - North residence hall renovation	\$375,000
Mayville state university - Fieldhouse renovation and addition	\$3,000,000
University of North Dakota - Airport hangar	\$2,000,000
University of North Dakota - Wellness center and athletic complex	\$21,000,000
Valley City state university - Kolstoe hall renovation	\$3,300,000
North Dakota state university - Bison court construction	\$11,000,000

Mayville state university may obtain and utilize special funds to assist in the renovation and addition of the fieldhouse. There is appropriated to Mayville state university the sum of \$1,000,000, or so much as may be necessary, from any other funds that may become available for this project, for the biennium beginning July 1, 2003, and ending June 30, 2005.

Total special funds appropriation	\$43,460,000
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SECTION 14. PROJECT AUTHORIZATIONS. The industrial commission, acting as the North Dakota building authority, shall arrange for the funding of the projects authorized in this section, hereby declared to be in the public interest, through the issuance of evidences of indebtedness under chapter 54-17.2, during the biennium beginning July 1, 2003, and ending June 30, 2005. The proceeds of the evidences of indebtedness and other available funds are hereby appropriated during the biennium beginning July 1, 2003, and ending June 30, 2005, for the following projects:

Dickinson state university	Murphy hall phase I addition	\$5,882,047
Valley City state university	Graichen gymnasium elevator and emergency exits	\$785,300
Mayville state university	Steamline replacement phase II	\$1,355,000

The industrial commission shall issue evidences of indebtedness under this section with the condition that lease rental payments need not begin until July 1, 2005. This authority of the industrial commission to issue evidences of indebtedness ends June 30, 2005, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and to comply with any covenants entered into before that date.

Grand total special funds appropriation \$8,022,347

SECTION 15. BOND ISSUANCE REPAYMENT RESPONSIBILITY. Of the total amount of evidences of indebtedness issued under the provisions of section 14 of this Act, a total of \$250,000 must be available from non-general fund sources to assist in the retirement of the evidences of indebtedness issued for the project costs associated with the construction of the projects authorized by this Act:

Dickinson state university \$250,000

The Dickinson state university local responsibility must be paid during the 2005-07 biennium.

SECTION 16. BOND ISSUANCE ASSISTANCE. The North Dakota university system shall provide funding of \$830,000 from the capital bond payments line item in subdivision 1 of chapter 28 of the 2001 Session Laws to the industrial commission for bond issuance buydown for projects authorized in section 14 of this Act.

SECTION 17. STUDENT FINANCIAL ASSISTANCE GRANTS. The funds appropriated for student financial assistance grants in section 1 of this Act must be allocated not less than twenty-two percent to students at private baccalaureate degree-granting institutions with the remaining funds allocated to students at public and native American institutions.

SECTION 18. LEGISLATIVE INTENT - HIGHER EDUCATION ACCOUNTABILITY MEASURES. It is the intent of the legislative assembly that the 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 exams 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. Ratio of faculty and staff to students.
 - g. 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:
 - a. Proportion of residents of the state who are within a forty-five-minute drive of a location at which they can receive educational programs from a provider.
 - b. 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. Administrative, instructional, and other cost per student.
 - e. Per capita general fund appropriations for higher education.
 - f. State general fund appropriation levels for university system institutions compared to peer institutions general fund appropriation levels.
 5. Financial operations, including:
 - a. Percentage of total university system funding used for instruction, research, and public service.
 - b. Percentage of total university system funding used for institutional support, operations, and maintenance of physical plant.
 - c. Ratio measuring the funding derived from operating and contributed income compared to total university system funding.
 - d. Deferred maintenance ratio measuring the size of the university system's outstanding maintenance as compared to its expendable net assets.
 - e. Viability ratio measuring the amount of expendable net assets as compared to the amount of long-term debt.
 - f. Research expenditures in proportion to the amount of revenue generated by research activity and funding received for research activity.

- g. New construction and major renovation capital projects for which specific appropriations are made, including budget to actual comparison, use of third-party funding, and related debt.

SECTION 19. GENERAL FUND TRANSFER. The industrial commission shall transfer to the general fund the sum of \$14,258,969 from the North Dakota student loan trust. The moneys must be transferred as requested by the director of the office of management and budget during the biennium beginning July 1, 2003, and ending June 30, 2005, 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 20. COMPETITIVE RESEARCH. The competitive research line item in subdivision 1 of section 1 of this Act includes \$100,000 for public private partnership for establishment of a design center at the university of North Dakota. Federal and private matching funds totaling \$300,000 must be leveraged by the North Dakota university system prior to June 30, 2004, or the funding is to be made available to other competitive research initiatives.

SECTION 21. CENTERS FOR EXCELLENCE. The centers for excellence line item in subdivision 1 of section 1 of this Act includes \$1,150,000 for the John D. Odegard center for aerospace science - center of excellence in multimedia technology and \$400,000 is for future centers for excellence. Of the \$1,150,000, \$206,000 is for the expanded air service enterprise - upper great plains air taxi service. Federal matching funding relating to the expanded air service enterprise - upper great plains air taxi service must be leveraged by the North Dakota university system before June 30, 2004, or the funding is to be made available for other centers for excellence. The funding for future centers for excellence is to be distributed by the state board of higher education. The funds provided in this section may not be used to supplant funding for current operations or academic instruction or to pay indirect costs.

SECTION 22. EDUCATION INCENTIVE PROGRAMS. The funding appropriated for education incentive programs 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 23. TRANSFER AUTHORITY. If, during the biennium beginning July 1, 2003, and ending June 30, 2005, the state board of higher education determines that funds allocated to institution operations in section 1 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 24. LEGISLATIVE COUNCIL STUDY - HIGHER EDUCATION. The legislative council shall consider continuing the study of higher education during the 2003-04 interim. If conducted, the study may include the use of the higher education roundtable format. The study should further refine the expectations of the North Dakota university system in meeting the state's needs in the twenty-first century, the funding methodology needed to meet those expectations and needs, and the accountability system and reporting methodology for the university system. The legislative council shall report its findings and recommendations, together with

any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 25. CONSTRUCTION OF BASKETBALL ARENA - APPROVAL.

The state board of higher education may approve amendments to terms of the agreement entered under chapter 159 of the 1999 Session Laws and may authorize the construction of a basketball arena on the site authorized under that legislation for the university of North Dakota to be financed with private funds.

SECTION 26. PURCHASE OF HOTEL - APPROVAL. The state board of higher education may authorize the university of North Dakota to purchase a hotel and land upon which the hotel is located within the city of Grand Forks for use as a student residence facility for a sum not to exceed \$1,200,000, under terms approved by the board. The university of North Dakota may utilize available housing reserve funds for the purchase.

SECTION 27. MAYVILLE STATE UNIVERSITY - FIELDHOUSE RENOVATION AND ADDITION - REVENUE NOTE. The state board of higher education may, as an alternative to issuing revenue bonds to finance the Mayville state university fieldhouse renovation and addition authorized in section 13 of this Act, enter an agreement or agreements and do all things necessary to finance this improvement with a tax-exempt revenue note, under terms and conditions acceptable to the board. The proceeds of the revenue note must be used to pay all or part of the cost of construction, equipment, and furnishing of the Mayville state university fieldhouse, costs of issuance, interest, and any reasonable required reserve. The note may be issued based on the pledge of revenues generated by the fieldhouse, student fees, local sales tax revenues dedicated to the improvement, and assignment of capital campaign collections or other private funds. A revenue note authorized by this section may not constitute a direct obligation of the state or any agency or political subdivision of the state within the meaning of any statutory or constitutional provision. The principal and interest on the note must be payable solely from revenues generated by the fieldhouse, student fees, local sales tax revenues dedicated to the improvement, and assignment of capital campaign collections or other private funds.

SECTION 28. LEGISLATIVE INTENT - UNIVERSITY OF NORTH DAKOTA SCHOOL OF MEDICINE AND HEALTH SCIENCES. It is the intent of the fifty-eighth legislative assembly that funding of \$395,000 included in the operations line item in subdivision 13 of section 1 of this Act is considered one-time funding and the funding is not to be included in the university of North Dakota school of medicine and health sciences base funding for determination of funding requests for the 2005-07 biennium.

SECTION 29. LEGISLATIVE INTENT - MAYVILLE STATE UNIVERSITY. It is the intent of the fifty-eighth legislative assembly that funding of \$50,000 included in the capital assets line item in subdivision 9 of section 1 of this Act is for improvement of the sound system in old main.

SECTION 30. LEGISLATIVE INTENT - MINOT STATE UNIVERSITY - BOTTINEAU. It is the intent of the fifty-eighth legislative assembly that funding of \$97,000 included in the capital assets line item in subdivision 12 of section 1 of this Act is for air conditioning-related extraordinary repairs.

SECTION 31. STUDENT INTERNSHIP PROGRAM - REPORT TO THE BUDGET SECTION. The state board of higher education shall study, during the 2003-04 interim, the use of internships to attract students to high-growth occupations

in the state and shall implement a student internship program by July 1, 2004. The board is encouraged to seek input from the department of commerce, job service North Dakota, the higher education roundtable, and the North Dakota student association, and the board may accept any public or private moneys to implement the program. The board shall provide a report on the program implemented to the first meeting of the budget section after July 1, 2004, and shall present a report to the fifty-ninth legislative assembly.

SECTION 32. EXEMPTION. The facility authorized in chapter 159 of the 1999 Session Laws is exempt from North Dakota Century Code section 5-02-05 for December 25, 2004.

SECTION 33. AMENDMENT. Section 15-10-08 of the North Dakota Century Code is amended and reenacted as follows:

15-10-08. Compensation of board members - Expenses - Legislative appropriations. Each member of the state board of higher education, except the student member, is entitled to receive as compensation ~~sixty-two~~ one hundred dollars ~~and fifty cents~~ per day for each calendar day actually spent devoted to the duties of office, and necessary expenses in the same manner and amounts as other state officials for attending meetings and performing other functions of office. The legislative assembly shall provide adequate funds to carry out the functions and duties of the board.

SECTION 34. AMENDMENT. Section 15-10-12 of the North Dakota Century Code is amended and reenacted as follows:

15-10-12. (Effective through June 30, ~~2003~~ 2005) 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 ~~pursuant to section 15-10-15~~. 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, 2003 2005) 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 pursuant to section 15-10-15. 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 35. 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, 2003 2005) 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 ~~which~~ 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 ~~such~~ the budget unit's estimate of financial requirements except ~~such~~ the estimate may not exceed ninety percent of ~~such~~ the budget unit's previous biennial appropriation. The director of the budget or ~~such~~ 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, 2003 2005) 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 ~~which~~ 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 ~~such~~ the budget unit's estimate of financial requirements except ~~such~~ the estimate may not exceed ninety percent of ~~such~~ the budget unit's previous biennial appropriation. The director of the budget or ~~such~~ 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.

¹ **SECTION 36. 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, 2003 2005) 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 ~~such~~ the detailed schedules of assets and liabilities as the director of the budget ~~deems~~ determines desirable, which ~~shall~~ must include; ~~but not be limited to~~, 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

¹ Section 54-44.1-06 was also amended by section 22 of Senate Bill No. 2015, chapter 36.

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, ~~but not be limited to,~~ 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 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 ~~such~~ 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 ~~in the format approved by the fifty-seventh legislative assembly.~~
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. ~~Such~~ Any other information as the director of the budget ~~deems~~ determines desirable or as is required by law.

(Effective after June 30, 2003 2005) 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 ~~such the~~ detailed schedules of assets and liabilities as the director of the budget ~~deems~~ determines desirable, which ~~shall~~ must include, ~~but not be limited to,~~ 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, ~~but not be limited to,~~ 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 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 ~~such~~ 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. ~~Such~~ Any other information as the director of the budget ~~deems~~ determines desirable or as is required by law.

SECTION 37. 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, 2003 2005) 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 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.

(Effective after June 30, 2003 2005) 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. 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.

SECTION 38. Section 4 to House Bill No. 1023, as approved by the fifty-eighth legislative assembly, is created and enacted as follows:

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

SECTION 39. EMERGENCY. The capital assets line items contained in section 1 of this Act and sections 12, 13, 14, 15, 16, and 38 of this Act are declared to be an emergency measure.

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 4**HOUSE BILL NO. 1004**

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

HEALTH DEPARTMENT

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 23-01 and a new section to chapter 23-09.3 of the North Dakota Century Code, relating to the state department of health combining purchasing with or on behalf of local public health units and to basic care facility license fees; to amend and reenact section 23-16-03 of the North Dakota Century Code, relating to health facilities licensing fees; to provide a continuing appropriation; to provide legislative intent; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 its various divisions, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$29,972,929
Operating expenses	24,151,257
Capital assets	1,629,972
Grants	36,190,628
Tobacco program	7,783,097
WIC food payments	<u>17,680,000</u>
Total all funds	\$117,407,883
Less estimated income	<u>104,306,791</u>
Total general fund appropriation	\$13,101,092

SECTION 2. ABANDONED MOTOR VEHICLE DISPOSAL FUND. The estimated income line item included in section 1 of this Act includes \$250,000, or so much of the sum as may be necessary, to be made available to the state department of health from the abandoned motor vehicle disposal fund, under section 39-26-11 for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 3. ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item included in section 1 of this Act includes \$250,000, 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, 2003, and ending June 30, 2005.

SECTION 4. DOMESTIC VIOLENCE PREVENTION FUND. The estimated income line item included in section 1 of this Act includes \$280,000, or so much of the sum as may be necessary, to be made available to the state department of health from the domestic violence prevention fund for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 5. ENVIRONMENTAL HEALTH PRACTITIONER LICENSURE FEE ADMINISTRATIVE FUND. The estimated income line item included in section 1 of this Act includes \$1,000, or so much of the sum as may be necessary, to be made available to the state department of health from the environmental health practitioner licensure fee administrative fund for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 6. WASTEWATER OPERATORS CERTIFICATION FUND. The estimated income line item included in section 1 of this Act includes \$21,000, or so much of the sum as may be necessary, to be made available to the state department of health from the wastewater operators certification fund for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 7. COMMUNITY HEALTH TRUST FUND. The estimated income line item included in section 1 of this Act includes \$5,760,000, or so much of the sum as may be necessary, to be made available to the state department of health from the community health trust fund for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 8. ESTIMATED INCOME - HEALTH CARE COOPERATIVE AGREEMENT FUND. The estimated income line item included in section 1 of this Act includes \$100,000, or so much of the sum as may be necessary, is to be made available to the state department of health from the health care cooperative agreement fund for the purpose of defraying the expenses of the certificate of public advantage program for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 9. 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 10. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Combined purchasing with local public health units - Continuing appropriation. The state department of health may make combined or joint purchases with or on behalf of local public health units for items or services. Payments received by the state department of health from local public health units pursuant to a combined or joint purchase must be deposited in the operating fund and are appropriated as a standing and continuing appropriation to the department of health for the purpose of this section.

SECTION 11. A new section to chapter 23-09.3 of the North Dakota Century Code is created and enacted as follows:

Application for license - License fee. Applicants for a license shall file applications under oath with the state department of health upon forms prescribed. An application for a license for facilities not owned by the state or its political subdivisions must be accompanied by a fee of ten dollars per bed. License fees collected pursuant to this section must be deposited in the state department of health services operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

SECTION 12. AMENDMENT. Section 23-16-03 of the North Dakota Century Code is amended and reenacted as follows:

23-16-03. Application for license - License fee. Applicants for license shall file applications under oath with the state department of health upon forms prescribed. Applications must be signed by the owner, or in the case of a corporation by two of its officers, or in the case of a county or municipal unit by the head of the governmental department having jurisdiction over it. Applications must set forth the full name and address of the owner of the institution for which license is sought, the names of the persons in control thereof, and such additional information as the state department of health may require, including affirmative evidence of ability to comply with such minimum standards, rules, and regulations as may be lawfully prescribed pursuant to this section. An application for a license for facilities not owned by the state or its political subdivisions must be accompanied by the following fees:

1. For each licensed acute care bed, ten dollars.
2. For each licensed skill care bed, ~~seven~~ ten dollars.
- ~~3. For each licensed intermediate care bed, five dollars.~~

License fees collected pursuant to this section must be deposited in the state department of health services operating fund in the state treasury and any expenditure from the fund is subject to appropriation by the legislative assembly.

SECTION 13. LEGISLATIVE INTENT - EMPLOYEE OUTSOURCING - REPORT TO BUDGET SECTION. It is the intent of the legislative assembly that the state department of health consider the option of outsourcing employee positions whenever reasonable and report to the budget section during the 2003-04 interim on the status of outsourcing employees.

SECTION 14. LEGISLATIVE COUNCIL STUDY - NURSING HOME SURVEY PROCESS. The legislative council shall consider studying, during the 2003-04 interim, the nursing home survey process, including a review of federal, state, and local agency procedures and requirements that result in additional costs, duplicated procedures, and added regulations for nursing homes. The study must also explore the potential for mitigating the impact of new mandated federal rules through additional collaboration between the state department of health and the department of human services and the submission of waiver requests. The legislative council shall report its findings and recommendations, including the potential for federal waivers and collaboration between agencies that may result in efficiencies, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved May 2, 2003
Filed May 2, 2003

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; to create and enact two new sections to chapter 54-36 of the North Dakota Century Code, relating to a revolving fund for publications and the authority to produce publications and charge a fee; to provide for a transfer; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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 Indian affairs commission for the purpose of defraying the expenses of the Indian affairs commission, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$314,311
Operating expenses	<u>40,932</u>
Total general fund appropriation	\$355,243

SECTION 2. Two new sections to chapter 54-36 of the North Dakota Century Code are created and enacted as follows:

Indian affairs commission printing fund for publications - Appropriation.

There is created a revolving fund known as the Indian affairs commission printing fund. All moneys collected by the commission from fees from persons purchasing publications and informal and educational materials produced or distributed by the commission and moneys received from any person for producing and distributing publications and informational and educational materials must be deposited into the Indian affairs commission printing fund. Money in the Indian affairs commission printing fund and earnings on the money in the fund are appropriated on a continuing basis to the commission to defray expenses incurred by the commission in producing and distributing publications and informational and educational materials. This fund is not subject to section 54-44.1-11. If on the first day of July in any year the amount of money in the Indian affairs commission printing fund is more than twenty-five thousand dollars, the amount in excess of twenty-five thousand dollars must be transferred to the general fund.

Publications - Fees. The commission may produce and distribute publications and informational and educational materials and may charge a fee for the publication. The fee must be established at an amount equal to the postage and printing costs of the publication.

SECTION 3. TRANSFER. The department of public instruction shall transfer \$14,500 from the department's revolving printing fund to the Indian affairs commission printing fund.

SECTION 4. EMERGENCY. Sections 2 and 3 of this Act are declared to be an emergency measure.

Approved May 2, 2003

Filed May 2, 2003

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. 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 the aeronautics commission, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$674,424
Operating expenses	1,831,368
Capital assets	134,000
Grants	<u>6,520,000</u>
Total all funds	\$9,159,792
Less estimated income	<u>8,637,292</u>
Total general fund appropriation	\$522,500

Approved April 16, 2003

Filed April 17, 2003

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; to provide for a performance audit of the department of veterans' affairs and the administrative committee on veterans' affairs; to provide for additional skilled nursing care bed capacity; to allow for line item transfers; to provide for a legislative council study; to provide reports to the budget section; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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 the department of veterans' affairs for the purpose of defraying their expenses, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Subdivision 1.

VETERANS' HOME

Salaries and wages	\$7,975,737
Operating expenses	2,711,704
Capital assets	<u>329,754</u>
Total all funds	\$11,017,195
Less estimated income	<u>7,971,123</u>
Total general fund appropriation	\$3,046,072

Subdivision 2.

VETERANS' AFFAIRS

Total all funds	\$524,292
Less estimated income	<u>43,494</u>
Total general fund appropriation	\$480,798
Grand total general fund appropriation section 1 of H.B. 1007	\$3,526,870
Grand total special funds appropriation section 1 of H.B. 1007	\$8,014,617
Grand total all funds appropriation section 1 of H.B. 1007	\$11,541,487

SECTION 2. VETERANS' POSTWAR TRUST FUND - REPORT. The department of veterans' affairs shall report on the use of moneys in the veterans' postwar trust fund to the appropriations committees of the fifty-ninth legislative assembly. The report must be presented during the agency's budget presentation.

SECTION 3. PERFORMANCE AUDIT - DEPARTMENT OF VETERANS' AFFAIRS AND THE ADMINISTRATIVE COMMITTEE ON VETERANS' AFFAIRS.

The state auditor shall conduct a performance audit of the department of veterans' affairs and the administrative committee on veterans' affairs during the biennium beginning July 1, 2003, and ending June 30, 2005. The results of the performance

audit must be presented to the legislative audit and fiscal review committee by July 1, 2004, and filed with the appropriations committees during the fifty-ninth legislative assembly.

SECTION 4. VETERANS' HOME GOVERNING BOARD - STATUS REPORTS - STRATEGIC PLAN - BUDGET SECTION. A representative of the veterans' home governing board shall periodically report to the budget section on the status of the board's progress in developing and implementing a strategic plan for the veterans' home during the 2003-04 interim.

SECTION 5. FULL-TIME EQUIVALENT POSITIONS - AUTHORIZATION. The governing board of the veterans' home may employ two new full-time equivalent employee positions for the veterans' home before June 30, 2003, as needed, subject to the availability of funds.

SECTION 6. 2001-03 BIENNIUM LINE ITEM TRANSFERS - AUTHORIZATION. Notwithstanding section 54-16-04, the veterans' home may transfer up to \$150,000 of appropriation authority between line items for the 2001-03 biennium to implement changes in technology and telecommunications, with the approval of the office of management and budget. Any line item transfers must be reported to the budget section.

SECTION 7. SKILLED NURSING CARE BED PURCHASE - TRANSFER. Notwithstanding the provisions of section 23 of chapter 431 of the 2001 Session Laws which require a reduction in licensed nursing facility bed capacity, the department of human services shall purchase eight skilled nursing care beds after April 14, 2003, from funding available in section 23 of chapter 431 of the 2001 Session Laws and transfer the purchased beds to the veterans' home in Lisbon.

SECTION 8. LEGISLATIVE COUNCIL STUDY - NURSING HOME RATE CLASS LIMITS. The legislative council shall consider studying, during the 2003-04 interim, the feasibility and desirability of establishing a separate payment rate class for the veterans' home and the related effect on the state's general fund and the long-term care industry in North Dakota. The study, if conducted, may be done in conjunction with the long-term care continuum study included in 2003 Senate Bill No. 2012. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 9. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$96,924, or so much of the sum as may be necessary, and \$205,586 of federal funds to the department of human services for the purpose of medicaid reimbursement to the veterans' home relating to the addition of nursing home beds, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 10. EMERGENCY. Sections 5, 6, and 7 of this Act are declared to be an emergency measure.

Approved May 2, 2003
Filed May 2, 2003

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. 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 the department of financial institutions, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$2,984,539
Operating expenses	<u>672,726</u>
Total appropriation from the financial institutions regulatory fund	\$3,657,265

Approved April 16, 2003

Filed April 17, 2003

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 amend and reenact section 4-02.1-05 of the North Dakota Century Code, relating to the compensation of state fair board members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 state fair association for the purpose of defraying the expenses of the state fair association, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Capital assets	\$210,000
Premiums	<u>391,750</u>
Total all funds	\$601,750
Less estimated income	<u>20,000</u>
Total general fund appropriation	\$581,750

SECTION 2. AMENDMENT. Section 4-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

4-02.1-05. Compensation of members. ~~Members may not receive any fixed salary for their services, but, by resolution~~ Each member of the board of directors, ~~per diem payments not exceeding ten dollars per day, or expense money not to exceed in amount the mileage and travel expenses allowed employees and officials of the state by law, may be allowed for attendance at each regular or special meeting~~ is entitled to receive compensation in the amount of seventy-five dollars per day plus reimbursement of expenses as provided by law for state officers while attending meetings or performing duties directed by the board. The board of directors ~~has the power, in its discretion, to contract for and may~~ pay to members rendering unusual or special services to the association, special compensation appropriate to the value of ~~such~~ the services.

Approved April 21, 2003

Filed April 22, 2003

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 and an appropriation of funds from the cultural endowment fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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 the council on the arts, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$425,568
Operating expenses	221,443
Grants	1,415,857
Lewis and Clark bicentennial	163,750
Total all funds	\$2,226,618
Less estimated income	1,222,215
Total general fund appropriation	\$1,004,403

SECTION 2. 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, 2003, and ending June 30, 2005.

Approved May 2, 2003
Filed May 2, 2003

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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 the highway patrol, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Administration	\$2,241,434
Field operations	30,434,831
Law enforcement training academy	<u>1,016,344</u>
Total all funds	\$33,692,609
Less estimated income	<u>15,481,087</u>
Total general fund appropriation	\$18,211,522

SECTION 2. SPECIAL FUNDS TRANSFER. The less estimated income line item in section 1 of this Act includes the sum of \$7,444,054, 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, 2003, and ending June 30, 2005.

SECTION 3. PAYMENTS TO HIGHWAY PATROL OFFICERS. Each patrol officer of the state highway patrol is entitled to receive from funds appropriated in section 1 of this Act an amount not to exceed \$170 per month for the biennium beginning July 1, 2003, and ending June 30, 2005. 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.

Approved May 2, 2003
Filed May 2, 2003

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 various divisions under the supervision of the director of the department of transportation; to authorize the department of transportation to acquire lands; to amend and reenact sections 24-01-51, 24-02-44, and 39-04-19, and subdivisions f and g of subsection 1 of section 39-09-02 of the North Dakota Century Code and section 7 of chapter 331 of the 2001 Session Laws, relating to haying of no-mow areas, department of transportation authority for emergency borrowing from the Bank of North Dakota, motor vehicle registration fees, and speed limits; and to repeal section 10 of chapter 331 of the 2001 Session Laws, relating to registration fee allocation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 various divisions under the supervision of the director of the department of transportation for the purpose of defraying the expenses of those divisions, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$105,222,404
Operating expenses	122,902,369
Capital assets	512,175,642
Grants	<u>44,085,503</u>
Total special funds appropriation	\$784,385,918

SECTION 2. ACQUIRING LAND IN NO-MOW AND MANAGED-MOW AREAS. The department of transportation may acquire land to eliminate no-mow and managed-mow areas adjacent to the state's roadways. If the department intends to acquire public land to eliminate no-mow and managed-mow areas, the department shall hold a public hearing in the county in which the land is located before the land is acquired.

SECTION 3. AMENDMENT. Section 24-01-51 of the North Dakota Century Code is amended and reenacted as follows:

24-01-51. (Effective January 1, 2004 2006) Haying of no-mow areas. Notwithstanding any other provision of law, a person owning land adjacent to an area within the right of way of a highway which is designated as a no-mow or managed-mow area may hay the no-mow or managed-mow area after July fifteenth without any payment or penalty.

SECTION 4. AMENDMENT. Section 24-02-44 of the North Dakota Century Code is amended and reenacted as follows:

24-02-44. Authority to borrow funds for a disaster - Appropriation. The department of transportation, subject to the approval of the emergency commission, may borrow moneys from the Bank of North Dakota to match federal emergency relief funds under the Transportation Equity Act for the 21st Century [Pub. L. 405-478]. Any moneys borrowed from the Bank of North Dakota pursuant to this section are appropriated. If it appears to the department of transportation that at the end of the biennium the amount available to repay the amount borrowed plus interest is insufficient to totally repay the Bank of North Dakota, the department of transportation shall request from the legislative assembly a deficiency appropriation from the state highway fund sufficient for the repayment of the amount borrowed plus interest.

SECTION 5. AMENDMENT. Section 39-04-19 of the North Dakota Century Code is amended and reenacted as follows:

39-04-19. Motor vehicle registration fees and mile tax. Motor vehicles required to pay registration fees or a mile tax shall pay the following fees:

1. Nonresidents electing to pay mile tax in lieu of registration, when authorized to do so by the department, shall pay a fee of twenty dollars for a trip permit which is valid for a period of seventy-two hours. All fees collected under the provisions of this subsection must be credited to the highway construction fund.
2. Motor vehicles required to be registered in this state must be furnished license plates upon the payment of the following annual fees; however, if a motor vehicle, including a motorcycle or trailer, first becomes subject to registration other than at the beginning of the registration period, such fees must be prorated on a monthly basis. The minimum fee charged hereunder must be five dollars:

a. Passenger motor vehicles:

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th, 8th, and 9th Years	10th, 11th, and 12th Years	13th and Subsequent Years
Less than 3,200	\$57.00 \$60	\$49.00 \$52	\$41.00 \$44	\$33.00 \$36
3,200 - 4,499	77.00 80	65.00 68	53.00 56	41.00 44
4,500 - 4,999	95.00 98	78.00 81	63.00 66	47.00 50
5,000 - 5,999	126.00 129	104.00 107	82.00 85	60.00 63
6,000 - 6,999	159.00 162	130.00 133	104.00 107	73.00 76
7,000 - 7,999	192.00 195	156.00 159	124.00 127	86.00 89
8,000 - 8,999	225.00 228	183.00 186	144.00 147	99.00 102
9,000 and over	258.00 261	209.00 212	164.00 167	112.00 115

A house car is subject to registration at the rates prescribed for other vehicles under this subdivision modified by using the weight applicable to a vehicle whose weight is forty percent of that of the house car, but not using a weight of less than four thousand pounds [1814.35 kilograms].

- b. Schoolbuses, buses for hire, buses owned and operated by religious, charitable, or nonprofit organizations and used exclusively for religious, charitable, or other public nonprofit purposes, and trucks or combination trucks and trailers, including commercial and noncommercial trucks, except those trucks or

combinations of trucks and trailers which qualify for registration under subsection 5:

YEARS REGISTERED

Gross Weights	1st Through 6th Years	7th Through 9th Years	10th Through 12th Years	13th Through 19th Years	20th and Subsequent Years
Not over 4,000	\$55.00 \$58	\$42.00 \$45	\$37.00 \$40	\$34.00 \$37	\$33.00 \$36
4,001 - 6,000	60.00 63	47.00 50	41.00 44	35.00 38	34.00 37
6,001 - 8,000	65.00 68	52.00 55	45.00 48	36.00 39	35.00 38
8,001 - 10,000	70.00 73	57.00 60	49.00 52	38.00 41	37.00 40
10,001 - 12,000	75.00 78	62.00 65	53.00 56	40.00 43	39.00 42
12,001 - 14,000	80.00 83	67.00 70	57.00 60	43.00 46	42.00 45
14,001 - 16,000	85.00 88	72.00 75	61.00 64	46.00 49	45.00 48
16,001 - 18,000	90.00 93	77.00 80	65.00 68	48.00 51	47.00 50
18,001 - 20,000	93.00 96	80.00 83	67.00 70	49.00 52	48.00 51

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, 4th, 5th, 6th, and 7th Years	8th, 9th, 10th, 11th, and 12th Years	13th and Subsequent Years
20,001 - 22,000	\$123.00 \$126	\$97.00 \$100	\$84.00 \$87
22,001 - 26,000	175.00 178	145.00 148	129.00 132
26,001 - 30,000	236.00 239	194.00 197	172.00 175
30,001 - 34,000	302.00 305	247.00 250	219.00 222
34,001 - 38,000	363.00 366	296.00 299	262.00 265
38,001 - 42,000	424.00 427	345.00 348	304.00 307
42,001 - 46,000	485.00 488	393.00 396	347.00 350
46,001 - 50,000	546.00 549	442.00 445	390.00 393
50,001 - 54,000	616.00 619	500.00 503	441.00 444
54,001 - 58,000	677.00 680	549.00 552	484.00 487
58,001 - 62,000	739.00 742	598.00 601	527.00 530
62,001 - 66,000	799.00 802	646.00 649	570.00 573
66,001 - 70,000	860.00 863	695.00 698	612.00 615
70,001 - 74,000	921.00 924	744.00 747	655.00 658
74,001 - 78,000	982.00 985	793.00 796	698.00 701
78,001 - 82,000	1,043.00 1,046	842.00 845	741.00 744
82,001 - 86,000	1,166.00 1,169	947.00 950	828.00 831
86,001 - 90,000	1,288.00 1,291	1,061.00 1,064	915.00 918
90,001 - 94,000	1,410.00 1,413	1,166.00 1,169	1,002.00 1,005
94,001 - 98,000	1,532.00 1,535	1,261.00 1,264	1,090.00 1,093
98,001 - 102,000	1,654.00 1,657	1,365.00 1,368	1,177.00 1,180
102,001 - 105,500	1,776.00 1,779	1,470.00 1,473	1,264.00 1,267

c. Motorcycles, fifteen dollars.

- Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. 3901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or pickup truck not exceeding ten thousand pounds [4535.92 kilograms] gross weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.
- Every trailer, semitrailer, and farm trailer required to be registered under this chapter must be furnished registration plates upon the payment of a twenty dollar annual fee. Every trailer, semitrailer, or farm trailer not required to be registered under this chapter must be furnished an identification plate upon the payment of a fee of five dollars. Upon the request of a person with a trailer or farm trailer to whom a registration or identification plate is provided under this subsection, the department shall provide a plate of the same size as provided for a motorcycle. The department shall provide notification of this option to the person before the replacement or issuance of the plate.

5. Trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] which are used as farm vehicles only, are entitled to registration under the following fee schedule and the provisions of this subsection. Farm vehicles are considered, for the purpose of this subsection, as trucks or combinations of trucks and trailers weighing more than twenty thousand but not more than one hundred five thousand five hundred pounds [more than 9071.84 but not more than 47854.00 kilograms] owned, or leased for at least one year by a bona fide resident farmer who uses the vehicles exclusively for transporting the farmer's own property or other property on a farm work exchange basis with other farmers between farms and the usual local trading places but not in connection with any commercial retail or wholesale business being conducted from those farms, nor otherwise for hire. In addition to the penalty provided in section 39-04-41, any person violating this subsection shall license for the entire license period the farm vehicle at the higher commercial vehicle rate in accordance with the weight carried by the farm vehicle at the time of the violation.

YEARS REGISTERED

Gross Weights	1st, 2nd, 3rd, 4th, 5th, and 6th Years	7th and 8th Years	9th and 10th Years	11th and Subsequent Years
20,001 - 22,000	\$95.00 \$98	\$84.00 \$84	\$67.00 \$70	\$49.00 \$52
22,001 - 24,000	100.00 103	85.00 88	70.00 73	51.00 54
24,001 - 26,000	108.00 111	91.00 94	74.00 77	53.00 56
26,001 - 28,000	119.00 122	99.00 102	80.00 83	57.00 60
28,001 - 30,000	128.00 131	107.00 110	86.00 89	61.00 64
30,001 - 32,000	143.00 146	120.00 123	97.00 100	70.00 73
32,001 - 34,000	153.00 156	128.00 131	103.00 106	74.00 77
34,001 - 36,000	163.00 166	136.00 139	109.00 112	78.00 81
36,001 - 38,000	173.00 176	144.00 147	115.00 118	82.00 85
38,001 - 40,000	183.00 186	152.00 155	121.00 124	86.00 89
40,001 - 42,000	193.00 196	160.00 163	127.00 130	90.00 93
42,001 - 44,000	203.00 206	168.00 171	133.00 136	94.00 97
44,001 - 46,000	213.00 216	176.00 179	139.00 142	98.00 101
46,001 - 48,000	223.00 226	184.00 187	145.00 148	102.00 105
48,001 - 50,000	233.00 236	192.00 195	151.00 154	106.00 109
50,001 - 52,000	243.00 246	200.00 203	157.00 160	110.00 113
52,001 - 54,000	253.00 256	208.00 211	163.00 166	114.00 117
54,001 - 56,000	263.00 266	216.00 219	169.00 172	118.00 121
56,001 - 58,000	273.00 276	224.00 227	175.00 178	122.00 125
58,001 - 60,000	283.00 286	232.00 235	181.00 184	126.00 129
60,001 - 62,000	293.00 296	240.00 243	187.00 190	130.00 133
62,001 - 64,000	303.00 306	248.00 251	193.00 196	134.00 137
64,001 - 66,000	313.00 316	256.00 259	200.00 203	138.00 141
66,001 - 68,000	323.00 326	264.00 267	206.00 209	142.00 145
68,001 - 70,000	333.00 336	272.00 275	212.00 215	146.00 149
70,001 - 72,000	343.00 346	280.00 283	218.00 221	150.00 153
72,001 - 74,000	353.00 356	288.00 291	224.00 227	154.00 157
74,001 - 76,000	363.00 366	296.00 299	230.00 233	158.00 161
76,001 - 78,000	373.00 376	304.00 307	236.00 239	162.00 165
78,001 - 80,000	383.00 386	312.00 315	242.00 245	166.00 169
80,001 - 82,000	393.00 396	320.00 323	248.00 251	170.00 173
82,001 - 84,000	403.00 406	328.00 331	254.00 257	174.00 177
84,001 - 86,000	413.00 416	336.00 339	260.00 263	178.00 181
86,001 - 88,000	423.00 426	344.00 347	266.00 269	182.00 185
88,001 - 90,000	433.00 436	352.00 355	272.00 275	186.00 189
90,001 - 92,000	443.00 446	360.00 363	278.00 281	190.00 193
92,001 - 94,000	453.00 456	368.00 371	284.00 287	194.00 197
94,001 - 96,000	463.00 466	376.00 379	290.00 293	198.00 201
96,001 - 98,000	473.00 476	384.00 387	296.00 299	202.00 205
98,001 - 100,000	483.00 486	392.00 395	302.00 305	206.00 209
100,001 - 102,000	493.00 496	400.00 403	308.00 311	210.00 213
102,001 - 104,000	503.00 506	408.00 411	314.00 317	214.00 217
104,001 - 105,500	513.00 516	416.00 419	320.00 323	218.00 221

6. A motor vehicle registered in subsection 5 may be used for custom combining operations by displaying identification issued by the department and upon payment of a fee of twenty-five dollars.

² **SECTION 6. AMENDMENT.** Subdivisions f and g of subsection 1 of section 39-09-02 of the North Dakota Century Code as amended in section 1 of House Bill No. 1046, as approved by the fifty-eighth legislative assembly, are amended and reenacted as follows:

- f. Fifty-five miles [88.51 kilometers] an hour on gravel, dirt, or loose surface highways, and on paved two-lane county and township highways if there is no speed limit posted, unless otherwise permitted, restricted, or required by conditions.
- g. Sixty-five miles [104.61 kilometers] an hour on paved two-lane highways ~~and on paved and divided multilane highways~~ if posted for that speed, unless otherwise permitted, restricted, or required by conditions.

SECTION 7. AMENDMENT. Section 7 of chapter 331 of the 2001 Session Laws is amended and reenacted as follows:

SECTION 7. ~~TEMPORARY ALLOCATION.~~ ~~Two~~ Three dollars of each registration fee collected under subsection 2 or 5 of section 39-04-19 must be deposited in the state highway fund.

SECTION 8. REPEAL. Section 10 of chapter 331 of the 2001 Session Laws is repealed.

Approved May 2, 2003
Filed May 2, 2003

² Section 39-09-02 was also amended by section 1 of House Bill No. 1046, chapter 325, and section 6 of House Bill No. 1047, chapter 317.

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; to provide for distribution amounts from permanent funds; to create and enact a new section to chapter 47-30.1 of the North Dakota Century Code, relating to property unclaimed by state agencies; and to amend and reenact sections 47-30.1-18, 47-30.1-21.1, and 47-30.1-24 and subsection 1 of section 47-30.1-35 of the North Dakota Century Code, relating to the enforcement of the Uniform Unclaimed Property Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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, not otherwise appropriated, 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, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$1,876,162
Operating expenses	722,572
Capital Assets	37,000
Grants	4,888,100
Contingencies	<u>50,000</u>
Total special funds	\$7,573,834

SECTION 2. OIL AND GAS IMPACT GRANT FUND. The amount of \$5,000,000, or so much of the amount as may be necessary, included in the total special funds appropriated in section 1 of this Act may be spent from the oil and gas impact grant fund by the commissioner of university and school lands for the purpose of providing oil and gas development impact grants and the administration of the oil and gas development impact grant program for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 3. GRANTS. Section 54-44.1-11 does not apply to appropriations made for oil impact grants in section 1 of this Act.

SECTION 4. 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 1 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 5. DISTRIBUTIONS TO STATE INSTITUTIONS. Notwithstanding section 15-03-05.2, during the biennium beginning July 1, 2003, and ending June 30, 2005, 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	\$1,132,000
University of North Dakota	946,000
Youth correctional center	396,000
School for the deaf	322,000
North Dakota state college of science	339,200
State hospital	325,200
Veterans' home	269,200
Valley City state university	268,000
North Dakota vision services - school for the blind	247,200
Mayville state university	186,000
Minot state university - Bottineau	33,200
Dickinson state university	33,200
Minot state university	<u>33,200</u>
Total	\$4,530,400

SECTION 6. A new section to chapter 47-30.1 of the North Dakota Century Code is created and enacted as follows:

Claims by state agencies - Budget section approval and report. Within one year of receipt of state agency property, the administrator shall notify the agency by certified mail. The commissioner of university and school lands shall present a report to the budget section of the legislative council identifying every state agency that has not submitted a claim for property belonging to that agency within one year of the receipt of the date of the certified mail receipt. Upon approval of the budget section of the legislative council, the agency relinquishes its right to recover its property.

SECTION 7. AMENDMENT. Section 47-30.1-18 of the North Dakota Century Code is amended and reenacted as follows:

47-30.1-18. Notice and publication of lists of abandoned property.

1. The administrator shall cause a notice to be published not later than 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.
2. ~~The published notice~~ One of the annual notices must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and contain:
 - a. The names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice within the county as specified in subsection 1.

- b. A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the administrator.
3. One of the annual notices must be a display advertisement that contains information on abandoned property and contact information for making an inquiry.
4. The administrator is not required to publish in the notice any items of less than fifty dollars unless the administrator considers their publication to be in the public interest.
4. 5. This section is not applicable to sums payable on traveler's checks, money orders, and other written instruments for which the holder is not required to report the name of the apparent owner.
6. The administrator may not publish in the notice any property clearly identified as belonging to a state agency. Property presumed to be state agency property that cannot be clearly identified as belonging to a specific agency also is exempt from public notice requirements.

SECTION 8. AMENDMENT. Section 47-30.1-21.1 of the North Dakota Century Code is amended and reenacted as follows:

47-30.1-21.1. Crediting of dividends or increments on stock to owner's account. Whenever property in the form of stock is paid or delivered to the administrator under this chapter, the owner is entitled to receive any dividends or other increments realized or accruing on the stock for as long as the stock is held by the administrator, provided the total amount of cash due the owner exceeds five dollars.

SECTION 9. AMENDMENT. Section 47-30.1-24 of the North Dakota Century Code is amended and reenacted as follows:

47-30.1-24. Filing of claim with administrator - Exempt from open records law.

1. A person, excluding another state, claiming an interest in any property paid or delivered to the administrator may file with the administrator a claim on a form prescribed by the administrator and verified by the claimant.
2. The administrator shall consider each claim within ninety days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.
3. If a claim is allowed, the administrator shall pay over or deliver to the claimant the property or the amount the administrator actually received or the net proceeds if it has been sold by the administrator.

4. Documentation and information submitted by a claimant for the purpose of proving ownership of the property is exempt from the open records law under section 44-04-18.

SECTION 10. AMENDMENT. Subsection 1 of section 47-30.1-35 of the North Dakota Century Code is amended and reenacted as follows:

1. All agreements to pay compensation to recover or assist in the recovery of property reported under section 47-30.1-17, made within twenty-four months after the date payment or delivery is made to the administrator, are unenforceable.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 14

HOUSE BILL NO. 1014

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

CHILDREN'S SERVICES COORDINATING COMMITTEE

AN ACT to provide an appropriation for defraying the expenses of the children's services coordinating committee; to provide for a report to the legislative council; to amend and reenact sections 54-56-06 and 54-56-07 of the North Dakota Century Code, relating to funds of the children's services coordinating committee; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from federal funds and other income to the children's services coordinating committee for the purpose of defraying the expenses of the children's services coordinating committee, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$66,302
Operating expenses	73,398
Grants	<u>2,374,900</u>
Total special funds	\$2,514,600

SECTION 2. ADDITIONAL INCOME - EMERGENCY COMMISSION APPROVAL. All income of the children's services coordinating committee in excess of the amount appropriated in section 1 of this Act is appropriated to the children's services coordinating committee, for the biennium beginning July 1, 2003, and ending June 30, 2005, and may be spent only upon authorization of the emergency commission.

SECTION 3. LEGISLATIVE INTENT - FUNCTION OF REGIONAL AND TRIBAL CHILDREN'S SERVICES COORDINATING COMMITTEES. It is the intent of the fifty-eighth legislative assembly that each regional and tribal children's services coordinating committee function as a regional planning committee to monitor and coordinate children's services in each region and that the regional and tribal children's services coordinating committees not directly provide services or programs.

SECTION 4. REFINANCING FUND ALLOCATIONS. Of the federal funds estimated to be generated as a result of participating entities claiming federal administrative cost reimbursements through the department of human services, the following allocations are made for the biennium beginning July 1, 2003, and ending June 30, 2005:

AGENCY/ORGANIZATION	ALLOCATION
Department of human services	10 percent
Children's services coordinating committee - Administration	5 percent
Children's services coordinating committee -	35 percent

Grants to regional and tribal children's services coordinating committees for administrative costs and collaboration efforts	
Regional and tribal children's services coordinating committees - Grants to participating entities	50 percent

SECTION 5. REPORT TO LEGISLATIVE COUNCIL. The children's services coordinating committee shall report to an interim committee designated by the legislative council at least twice during the 2003-04 interim on the amount of "refinancing" funds generated and the uses of the funds for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 6. AMENDMENT. Section 54-56-06 of the North Dakota Century Code is amended and reenacted as follows:

54-56-06. Regional or tribal children's services coordinating committee - Functions. A regional or tribal children's services coordinating committee, if established, must be composed of community volunteers and must maintain its own records. To foster and nurture the broadest base of community support and participation, at least one-third of regional or tribal committee members must be from the private sector. A regional or tribal committee shall:

1. Recruit local organizations to become participating entities to claim federal administrative cost reimbursements through the department of human services.
2. Expend administrative funding received from the state children's services coordinating committee only for costs associated with salaries and benefits, mileage and travel, meals, conferences and workshops, contract services, telephone, office supplies, marketing, printing, postage, dues and subscriptions, and room rent.
3. Reimburse a committee member only for expenses that are not reimbursed by the organization or entity that the member is representing on the regional or tribal committee.
4. Submit all claims received from its participating entities claiming federal administrative cost reimbursements to the department of human services within ninety days of the end of each calendar quarter.
5. Distribute ~~twenty~~ twenty five percent of the federal funds generated as a result of a participating entity claiming federal administrative cost reimbursements through the department of human services to the participating entity that generated the federal administrative cost reimbursement.
6. Distribute funds due to participating entities within twenty days of receiving the funds.

A regional or tribal committee may not maintain an unobligated fund balance, excluding income received during the final thirty days of each fiscal year, which exceeds fifty thousand dollars ~~or twenty percent of annual gross income, whichever is less,~~ at the end of each fiscal year.

SECTION 7. AMENDMENT. Section 54-56-07 of the North Dakota Century Code is amended and reenacted as follows:

54-56-07. Operating fund balance. The children's services coordinating committee may not maintain an unobligated operating fund balance, excluding income received during the final thirty days of each fiscal year, which exceeds fifty thousand dollars ~~or twenty percent of annual income allocated for its administrative costs and statewide grants, whichever is less,~~ at the end of each fiscal year.

SECTION 8. EMERGENCY. Section 6 of this Act is declared to be an emergency measure.

Approved April 18, 2003

Filed April 18, 2003

CHAPTER 15

HOUSE BILL NO. 1015

(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 provide a continuing appropriation; to provide for an industrial commission review; to provide an exemption; and to authorize transfers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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, 2003, and ending June 30, 2005, as follows:

Subdivision 1.

INDUSTRIAL COMMISSION

Salaries and wages	\$6,244,663
Operating expenses	1,904,767
Capital assets	68,300
Grants	16,270,000
Bond payments	19,830,990
Total all funds	<u>\$44,318,720</u>
Less estimated income	<u>37,291,836</u>
Total general fund appropriation	<u>\$7,026,884</u>

Subdivision 2.

BANK OF NORTH DAKOTA - OPERATIONS

Salaries and wages	\$16,527,614
Operating expenses	10,925,665
Capital assets	825,000
Contingencies	1,500,000
Total appropriation from Bank of North Dakota fund	<u>\$29,778,279</u>

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	<u>950,000</u>
Total general fund appropriation	<u>\$8,075,000</u>

Subdivision 4.

MILL AND ELEVATOR ASSOCIATION

Salaries and wages	\$16,690,956
Operating expenses	12,991,196
Contingencies	250,000

Agriculture promotion	<u>50,000</u>
Total appropriation from mill and elevator fund	\$29,982,152

Subdivision 5.

HOUSING FINANCE AGENCY

Salaries and wages	\$3,929,907
Operating expenses	2,391,480
Grants	27,168,380
HFA contingencies	<u>100,000</u>
Total appropriation from housing finance agency fund	\$33,589,767
Grand total general fund appropriation H.B. 1015	\$15,101,884
Grand total special funds appropriation H.B. 1015	\$130,642,034
Grand total all funds appropriation H.B. 1015	\$145,743,918

SECTION 2. APPROPRIATION. In addition to the amount appropriated to the housing finance agency in subdivision 5 of section 1 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, 2003, and ending June 30, 2005.

SECTION 3. APPROPRIATION - EMERGENCY COMMISSION APPROVAL. In addition to the amount appropriated to the industrial commission in subdivision 1 of section 1 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 industrial commission under chapters 4-36 and 54-17.2 and section 54-17-25, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 4. TRANSFER. The sum of \$66,407, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the North Dakota mill and elevator association. The moneys must be transferred during the biennium beginning July 1, 2003, and ending June 30, 2005, upon order of the industrial commission.

SECTION 5. TRANSFER. The sum of \$86,656, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 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, 2003, and ending June 30, 2005, upon order of the industrial commission.

SECTION 6. TRANSFER. The sum of \$57,760, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the housing finance agency fund. The moneys must be transferred during the biennium beginning July 1, 2003, and ending June 30, 2005, upon order of the industrial commission.

SECTION 7. TRANSFER. The sum of \$20,248, or so much of the sum as may be necessary, included in the special funds appropriation line item in subdivision 1 of section 1 of this Act, is from the revenues of the municipal bond bank. The available moneys must be transferred during the biennium beginning July 1, 2003, and ending June 30, 2005, upon order of the industrial commission.

SECTION 8. INCOME AUTHORIZATION - STUDENT LOAN TRUST. There is authorized the receipt of fees by the industrial commission in the sum of \$76,655, or so much of the sum as is owed, included in the special funds appropriation line

item in subdivision 1 of section 1 of this Act, from the student loan trust for administrative services rendered by the 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, 2003, and ending June 30, 2005, upon order of the industrial commission.

SECTION 9. TRANSFER - INDUSTRIAL COMMISSION REPORT. The 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, 2003, and ending June 30, 2005. The cumulative transfers during the 2003-05 biennium may not exceed the mill and elevator association's estimated net income for the 2003-05 biennium as projected by the industrial commission. The industrial commission shall report to the fifty-ninth legislative assembly regarding the mill and elevator association's net income to date and estimated net income for the remainder of the 2003-05 biennium.

SECTION 10. LIGNITE RESEARCH, DEVELOPMENT, AND MARKETING PROGRAM - APPROPRIATION - LIGNITE MARKETING FEASIBILITY STUDY. The amount of \$1,300,000, or so much of the amount as may be necessary, included in the grants and special funds appropriation line items in subdivision 1 of section 1 of this Act, is appropriated from the lignite research fund for the purpose of contracting for independent, nonmatching lignite marketing feasibility study or studies that determine those focused priority areas where near-term, market-driven projects, activities, or processes will generate matching private industry investment and have the most potential of preserving existing lignite production and jobs or that will lead to increased development of lignite and its products and create new jobs and economic growth for the general welfare of 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 project; for nonmatching externality studies and activities in externality proceedings; or other marketing or environmental activities that assist with marketing of lignite-based electricity and lignite-based byproducts. Moneys not needed for the purposes stated herein are available to the commission for funding projects, processes, or activities under the lignite research, development, and marketing program.

SECTION 11. LEGISLATIVE INTENT - LEASE PAYMENTS. The amount of \$19,830,990 included in subdivision 1 of section 1 of this Act in the bond payments line item must be paid from the following funding sources during the biennium beginning July 1, 2003, and ending June 30, 2005:

Higher education institutions	\$12,790,689
Department of corrections and rehabilitation - State penitentiary	2,117,009
Department of corrections and rehabilitation - Youth correctional center	554,598
State department of health	387,673
Job service North Dakota	553,594
Department of human services - Southeast human service center	589,075
Department of human services - State hospital	547,608
Department of human services - Developmental center at westwood park, Grafton	627,582
Adjutant general	60,987
Veterans' home improvement fund	<u>235,050</u>
Total	\$18,463,865

University system energy conservation projects	<u>\$1,367,125</u>
Total	\$19,830,990

SECTION 12. APPROPRIATION - TRANSFER. The funds appropriated by subdivision 3 of section 1 of this Act must be transferred by the Bank of North Dakota to the partnership in assisting community expansion fund established by section 6-09.14-02; the agriculture partnership in assisting community expansion fund established by section 6-09.13-04; and the beginning farmer loan fund established by section 6-09-15.5 in the amounts set out in that subdivision. 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 1 of this Act.

SECTION 13. EXEMPTION. The Bank of North Dakota contingencies appropriation contained in subdivision 2 of section 1 of chapter 40 of the 2001 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available for the continued development and implementation of systems that provide the Bank of North Dakota and student loans of North Dakota customers with the ability to perform business activity electronically during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 14. INDUSTRIAL COMMISSION REVIEW - OIL AND GAS DIVISION AND GEOLOGICAL SURVEY MERGER - BUDGET SECTION REPORT. The industrial commission shall review the implementation of the merger of the oil and gas division and the geological survey to be accomplished by July 1, 2005. In conducting the review, the industrial commission shall consider allowing the oil and gas director to appoint the state geologist, recommend a name change for the merged oil and gas division and geological survey, and identify efficiencies and savings that will result from the merger. Before November 1, 2004, the industrial commission shall present a report to the budget section regarding the recommendations for the oil and gas division and geological survey merger. The industrial commission shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

³ **SECTION 15. OIL AND GAS DIVISION AND GEOLOGICAL SURVEY EMPLOYEE POSITIONS.** Any full-time equivalent employee position in the oil and gas division and geological survey that becomes vacant because of an employee retirement or an employee resignation must remain vacant for the remainder of the 2003-05 biennium.

Approved May 2, 2003
Filed May 2, 2003

³ Section 15 was vetoed by the Governor, see chapter 570.

CHAPTER 16

HOUSE BILL NO. 1017

(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; to provide an exemption; to provide for a legislative council study; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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 its expenses, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$34,017,882
Operating expenses	14,529,359
Capital assets	39,684
Grants	7,617,792
Work force 2000	1,250,000
Total all funds	<u>\$57,454,717</u>
Less estimated income	<u>56,204,717</u>
Total general fund appropriation	<u>\$1,250,000</u>

SECTION 2. APPROPRIATION. All federal funds received by job service North Dakota in excess of those funds appropriated in section 1 of this Act are appropriated, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 3. EXEMPTION. The work force 2000 appropriation contained in section 1 of chapter 42 of the 2001 Session Laws is not subject to the provisions of section 54-44.1-11 for an amount of up to \$225,000 and any unexpended funds from this appropriation are available to be used to subcontract with the North Dakota manufacturing extension partnership to provide training within industries and lean manufacturing training to North Dakota residents employed at motor coach industries during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 4. WORK FORCE 2000 FUNDING. Fifty percent of the work force 2000 funding in section 1 of this Act must be used for projects for new or expanding businesses in North Dakota.

SECTION 5. LEGISLATIVE COUNCIL STUDY - WORKFORCE DEVELOPMENT, WORKFORCE TRAINING, PUBLIC LABOR EXCHANGE, AND UNEMPLOYMENT INSURANCE PROGRAM DELIVERY SYSTEMS. The legislative council shall consider studying during the 2003-04 interim the impact of pending federal legislation that would significantly change the respective federal-state responsibilities and funding for workforce development, workforce training, public labor exchange, and unemployment insurance programs. The study should consider appropriate organizational placement within state government for delivery of

workforce development, workforce training, public labor exchange, and unemployment insurance programs, appropriate methods of funding the programs, including replacement of the Federal Unemployment Tax Act funds currently funding the administration of the unemployment insurance and public labor exchange program, and other relevant issues as may be identified. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 6. EMERGENCY. Section 3 of this Act is declared to be an emergency measure.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 17**HOUSE BILL NO. 1018**

(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. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from billing agencies for services, to the office of administrative hearings for the purpose of defraying its expenses, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$938,648
Operating expenses	<u>304,310</u>
Total special funds appropriation	\$1,242,958

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 18

HOUSE BILL NO. 1019

(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 for a transfer to the general fund; to provide an exemption; to establish a trade promotion authority; to provide a continuing appropriation; to provide for a report to the legislative council; to provide statements of legislative intent; to direct the state tax commissioner to audit the ethanol incentive program; to create and enact a new section to chapter 15-10 and a new subsection to section 54-59-05 of the North Dakota Century Code, relating to centers of excellence and to wide area network services provided by the information technology department; to amend and reenact section 57-38.5-03 of the North Dakota Century Code, relating to the seed capital investment tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$6,713,340
Operating expenses	8,237,247
Grants	46,585,026
Discretionary grants	1,447,127
North Dakota development fund	1,550,000
Agricultural products utilization	2,983,179
Lewis and Clark bicentennial	<u>951,911</u>
Total all funds	\$68,467,830
Less estimated income	<u>52,353,107</u>
Total general fund appropriation	\$16,114,723

SECTION 2. AGRICULTURE FUEL TAX REFUNDS. The less estimated income line item in section 1 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, 2003, and ending June 30, 2005.

SECTION 3. EXEMPTION. The funds appropriated in the discretionary grants line item in section 1 of this Act are not subject to section 54-44.1-11 and any unexpended funds from this line item may be spent during the biennium beginning July 1, 2005, and ending June 30, 2007.

SECTION 4. EXEMPTION. The funds appropriated in the agricultural products utilization line item in section 1 of this Act are not subject to section 54-44.1-11 and any unexpended funds from this line item relating to grants awarded

may be available for continued payment of grants awarded but not paid during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 5. STATE TAX COMMISSIONER - AUDIT OF ETHANOL PRODUCTION INCENTIVE PROGRAM. The state tax commissioner shall conduct an audit of the ethanol production incentive program during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 6. GENERAL FUND TRANSFER. The industrial commission shall transfer to the general fund the sum of \$1,000,000 from the North Dakota student loan trust. The moneys must be transferred as requested by the director of the office of management and budget during the biennium beginning July 1, 2003, and ending June 30, 2005, 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 7. LEGISLATIVE INTENT - SEED CAPITAL - EARLY STAGE FINANCING. It is the intent of the legislative assembly that the state's seed capital investment tax credit be the primary focus to encourage the availability of seed capital or early stage financing for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 8. USE OF DEVELOPMENT FUND - ADMINISTRATIVE COSTS. Moneys in the development fund may be used for defraying the costs of administering the fund for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 9. ACCOUNTABILITY MEASURES - REPORTING. The commissioner of the department of commerce shall monitor and report annually during the 2003-04 interim to either the budget section or an interim committee designated by the legislative council regarding the following North Dakota economic goals and associated benchmarks:

1. Develop unified efforts for economic development based on collaboration and accountability:
 - a. Site selection ranking of the North Dakota department of commerce.
 - b. Share of local economic development organizations participating in statewide marketing strategy.
2. Strengthen cooperation between the university system, economic development organizations, and private businesses:
 - a. Academic research and development expenditures as percentage of gross state product.
 - b. Industry research and development expenditures as percentage of gross state product.
3. Create quality jobs that retain North Dakota's workforce and attract new high-skilled labor:
 - a. Net job growth.

- b. New private sector businesses per one hundred thousand residents.
 - c. Average annual wage.
 - d. Net migration.
4. Create a strong marketing image that builds on the state's numerous strengths, including workforce, education, and quality of life.
 - a. Positive national and out-of-state media exposure (favorable mentions).
 - b. Number of North Dakota department of commerce web site hits per month.
 - c. Number of leads generated by the North Dakota department of commerce.
 5. Accelerate job growth in sustainable, diversified industry clusters to provide opportunities for the state's economy:
 - a. Net job growth in manufacturing.
 - b. Net job growth in business services.
 - c. New private sector businesses in manufacturing.
 - d. New private sector businesses in business services.
 - e. Number of utility patents per one hundred thousand residents.
 6. Strengthen North Dakota's business climate to increase international competitiveness:
 - a. Gross state product (annual growth rate).
 - b. Venture capital investments (thousands).
 - c. Merchandise export value (per capita).

The department, in cooperation with job service North Dakota, the department of human services, and the university system, shall include in its report the number of individuals trained and the number who became employed as a result of each department's workforce development and training programs, including the state's investment, the areas of occupational training, the average annual salary of those employed, and the average increase in earnings twelve months after completion of training.

SECTION 10. TOURISM DIVISION - LEWIS AND CLARK MARKETING.

Notwithstanding the provisions of Senate Bill No. 2337, as approved by the fifty-eighth legislative assembly, the department of commerce shall use the \$2,900,000 appropriated in Senate Bill No. 2337, only for defraying the tourism division's expenses of marketing the Lewis and Clark bicentennial celebration for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 11. TOURISM DIVISION - LEWIS AND CLARK MARKETING CONTRACTS. The tourism division of the department of commerce shall request bids for each Lewis and Clark bicentennial-related marketing campaign developed during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 12. TOURISM DIVISION - REPORTING. The department of commerce shall provide a report to the appropriations committees of the fifty-ninth legislative assembly regarding the tourism division's appropriations and expenditures to date detail for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 13. LEGISLATIVE INTENT - PARTNERSHIPS WITH INDIAN TRIBES. It is the intent of the legislative assembly that the department of commerce assist in the creation of business partnerships with North Dakota Indian tribes in order to increase primary sector business growth on Indian reservations and other areas of the state for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 14. LEGISLATIVE INTENT - TOURISM LEARNING VACATIONS. It is the intent of the legislative assembly that the tourism division of the department of commerce establish, coordinate, and promote learning vacations in North Dakota for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 15. LEWIS AND CLARK INTERPRETIVE CENTER GRANT. The Lewis and Clark bicentennial line item in section 1 of this Act includes \$150,000 from the general fund for the tourism division for the purpose of providing a grant to the North Dakota Lewis and Clark bicentennial foundation for costs associated with the Lewis and Clark interpretive center near Washburn for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 16. VISITOR RESCUE GRANTS. The discretionary grants line item in section 1 of this Act includes \$25,000 from the general fund for the tourism division for the purpose of reimbursing political subdivisions for extraordinary costs incurred in rescues of visitors to North Dakota tourist attractions for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 17. RED RIVER VALLEY RESEARCH CORRIDOR MARKETING. The discretionary grants line item in section 1 of this Act includes \$200,000 from the general fund for the purpose of contracting with a private organization for conducting a marketing and image-building campaign for the Red River valley research corridor during the second year of the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 18. FORT ABRAHAM LINCOLN GRANT. The Lewis and Clark bicentennial line item in section 1 of this Act includes \$150,000 from the general fund for the tourism division for the purpose of providing a grant to the fort Abraham Lincoln foundation for costs associated with the national guard reconstruction of the seventh cavalry stable, interpretation of the stable, and maintenance and repairs of other fort buildings, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 19. DEVELOPMENT FUND - CENTERS OF EXCELLENCE GRANTS. Notwithstanding chapter 10-30.5, the department of commerce shall provide a grant from the development fund of \$1,250,000 to the North Dakota state university center for technology enterprise and of \$800,000 to the university of North Dakota center for innovation. The department shall provide the grant on October 1, 2003.

SECTION 20. LEGISLATIVE INTENT - INTERNSHIP PROGRAM. It is the intent of the legislative assembly that the department of commerce workforce development division develop an internship program involving its internet web site and in conjunction with North Dakota university system programs.

SECTION 21. TRADE PROMOTION AUTHORITY - REPORT TO FIFTY-NINTH LEGISLATIVE ASSEMBLY. The department of commerce shall establish a trade promotion authority for promoting North Dakota products and improving international trade of North Dakota products for the biennium beginning July 1, 2003, and ending June 30, 2005. The department shall use \$75,000 from the general fund appropriated in the operating expenses line item in section 1 of this Act for operating costs of the authority for the 2003-05 biennium. The department shall report to the appropriations committees of the fifty-ninth legislative assembly regarding its recommendations to improve trade of North Dakota products with other countries and to overcome trade barriers and its recommendation regarding continuation of the trade promotion authority.

SECTION 22. GIFTS, GRANTS, AND OTHER INCOME - CONTINUING APPROPRIATION. The department of commerce may accept gifts, grants, or other income for use by the trade promotion authority which are hereby appropriated for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 23. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Centers of excellence.

1. The state board of higher education shall establish a centers of excellence program relating to economic development consistent with the purpose under subsection 2. The board shall designate centers of excellence. A designation by the board of a center of excellence within the economic development category does not preclude the board or a higher education institution from designating a center of excellence in an academic or service area. Centers of excellence relating to economic development include the North Dakota state university center for technology enterprise and the university of North Dakota center for innovation.

Before January 1, 2004, the board, in consultation with the North Dakota economic development foundation and with private sector input, shall establish definitions and eligibility criteria for centers of excellence relating to economic development. The board shall present the definitions and eligibility criteria for the centers of excellence relating to economic development to an interim committee designated by the legislative council. The North Dakota economic development foundation may identify and recommend high priority centers of excellence relating to economic development for consideration by the state board of higher education for future budget requests.

2. The purpose of the program is to develop and engage strategies for science and technology research and development, commercialization, entrepreneurship, infrastructure, growth and expansion of knowledge-based industries, and activities in the state to develop innovative approaches that expand the gross state product; to assist efforts to attract private and federal assistance for science and technology research and development and for commercialization in

growth clusters most likely to increase the gross state product; to increase collaboration among state, federal, and private research and development and technology commercialization organizations in the state; to strengthen the leadership and support of the national science foundation experimental program to stimulate competitive research programs and to encourage partnerships with other state institutions for expanded efforts to stimulate economic growth in identified industry clusters; to provide leadership in science and technology policy at a regional, a national, and an international level; and to create employment opportunities for North Dakota university system graduates. Identified industry clusters include advanced manufacturing, aerospace, energy, information and technology, tourism, and value-added agriculture.

3. The state board of higher education shall allocate funds from appropriations for undesignated centers of excellence relating to economic development based on the criteria established and shall report on such allocations, in partnership with the North Dakota economic development foundation, to the budget section. A recipient of funds under this section shall use the funds to enhance capacity, enhance infrastructure, and leverage state, federal, and private sources of funding. Funds awarded under this section may not be used to supplant funding for current operations or academic instruction or to pay indirect costs. The board may award funds under this section to research universities, university-related foundations, and public institutions that are located in the state which demonstrate the potential to deliver expertise and service to industry clusters that will contribute to the gross state product. A recipient of funds under this section which is an institution of higher education under the control of the board of higher education or which is a nonprofit university-related foundation shall:
 - a. Provide the board of higher education with documentation of the availability of two dollars of matching funds for each dollar of funds awarded under this section as a condition of eligibility for receipt of funds under this section; and
 - b. Provide the board of higher education, governor, and North Dakota economic development foundation with annual reports for four fiscal years following receipt of the funds.

⁴ **SECTION 24.** A new subsection to section 54-59-05 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding subsection 11, 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.

⁴ Section 54-59-05 was also amended by section 4 of House Bill No. 1043, chapter 503, and section 3 of House Bill No. 1043, chapter 503.

SECTION 25. 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 or 57-38-30.3. The amount of the credit to which a taxpayer is entitled is ~~thirty~~ forty-five percent of the amount invested by the taxpayer in qualified businesses during the taxable year, subject to the following:

1. The aggregate annual investment for which a taxpayer may obtain a tax credit under this section is not less than five thousand dollars and not more than two hundred fifty thousand 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 ~~fifty percent~~ 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 not allowed because of the limitations in this section may be carried forward for up to four taxable years after the taxable year in which the investment was made.
4. A partnership 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 partnership's investment in a qualified business must be determined at the partnership level. The amount of the total credit determined at the partnership level must be allowed to the partners, limited to individuals, estates, and trusts, in proportion to their respective interests in the partnership.
5. The investment must be at risk in the business. An investment for which a credit is received under this section must remain in the business for at least three years.
- ~~6.~~ ~~Tax credits for investments in one qualified business may not exceed two hundred fifty thousand dollars.~~
- ~~7.~~ 6. 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.
- ~~8.~~ 7. A taxpayer who owns a controlling interest in the qualified business or whose full-time professional activity is the operation of the 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.
- ~~9.~~ 8. 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 as provided under section 57-38-45, must be paid by the taxpayer.

SECTION 26. EFFECTIVE DATE. Section 25 of this Act is effective for taxable years beginning after December 31, 2002.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 19**HOUSE BILL NO. 1020**

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

**BOARD FOR VOCATIONAL AND TECHNICAL
EDUCATION**

AN ACT to provide an appropriation for defraying the expenses of the state board for vocational and technical education; and to provide a statement of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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 vocational and technical education for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$2,966,641
Operating expenses	956,237
Grants	19,291,883
Adult farm management	625,760
Workforce training	1,350,000
Postsecondary education vocational grants	<u>357,452</u>
Total all funds	\$25,547,973
Less estimated income	<u>10,874,500</u>
Total general fund appropriation	\$14,673,473

SECTION 2. LEGISLATIVE INTENT - HIGHER EDUCATION FUNDING. It is the intent of the fifty-eighth legislative assembly that the funds totaling \$1,350,000 included in the state board for vocational and technical education for workforce training be considered by the North Dakota university system as a part of higher education's share of total general fund spending.

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 20**HOUSE BILL NO. 1021**

(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 provide legislative intent; and to provide for a transfer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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, 2003, and ending June 30, 2005, as follows:

Subdivision 1.

NORTH DAKOTA STATE UNIVERSITY EXTENSION SERVICE

Extension service	\$33,567,597
Soil conservation committee	<u>778,679</u>
Total all funds	\$34,346,276
Less estimated income	<u>20,486,830</u>
Total general fund appropriation	\$13,859,446

Subdivision 2.

NORTHERN CROPS INSTITUTE

Total all funds	\$1,523,347
Less estimated income	<u>777,345</u>
Total general fund appropriation	\$746,002

Subdivision 3.

UPPER GREAT PLAINS TRANSPORTATION INSTITUTE

Total all funds	\$10,844,750
Less estimated income	<u>10,361,651</u>
Total general fund appropriation	\$483,099

Subdivision 4.

MAIN RESEARCH CENTER

Total all funds	\$60,517,214
Less estimated income	<u>32,306,474</u>
Total general fund appropriation	\$28,210,740

Subdivision 5.

RESEARCH CENTERS

Dickinson research center	\$5,281,134
Central grasslands research center	1,667,387
Hettinger research center	1,521,475
Langdon research center	1,282,885
North central research center	1,712,510
Williston research center	1,643,075
Carrington research center	<u>3,326,616</u>
Total all funds	\$16,435,082
Less estimated income	<u>8,967,403</u>
Total general fund appropriation	\$7,467,679

Subdivision 6.

AGRONOMY SEED FARM

Agronomy seed farm	<u>\$1,166,604</u>
Total special funds appropriation	\$1,166,604
Grand total general fund appropriation H.B. 1021	\$50,766,966
Grand total special funds appropriation H.B. 1021	\$74,066,307
Grand total all funds appropriation H.B. 1021	\$124,833,273

SECTION 2. ADDITIONAL INCOME - APPROPRIATION. In addition to the amount included in the grand total special funds appropriation line item in section 1 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, 2003, and ending June 30, 2005.

SECTION 3. 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 1 of this Act and shall notify the office of management and budget within ten days following the transfer.

SECTION 4. 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 1 of this Act, subject to availability of funds. The board shall report any adjustments to the office of management and budget before submission of the 2005-07 budget request.

SECTION 5. UNEXPENDED GENERAL FUND - EXCESS INCOME. Any unexpended general fund appropriation authority to and any excess income received by entities listed in section 1 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, 2005, and ending June 30, 2007.

SECTION 6. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item in subdivision 4 of section 1 of this Act includes the sum of \$120,000, or so much of the sum as may be necessary, from the environment and rangeland protection fund for the purpose of

constructing chemical handling facilities at select research centers, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 7. ESTIMATED INCOME - MINOR USE PESTICIDE FUND. The estimated income line item in subdivision 4 of section 1 of this Act includes the sum of \$250,000, or so much of the sum as may be necessary, from the minor use pesticide fund for the purpose of defraying the expenses of minor use pesticide research programs, for the biennium beginning July 1, 2003, and ending June 30, 2005. These funds may be transferred upon approval of the crop protection product harmonization and registration board.

SECTION 8. LEGISLATIVE INTENT - BEEF SYSTEMS CENTER OF EXCELLENCE. It is the intent of the fifty-eighth legislative assembly that a beef systems center of excellence be established by the department of animal and range science with the \$800,000 appropriation provided in subdivision 4 of section 1 of this Act in accordance with the provisions of 2003 Senate Bill No. 2334.

SECTION 9. AGRICULTURE PARTNERSHIP IN ASSISTING COMMUNITY EXPANSION FUND - TRANSFER. Notwithstanding the provisions of chapter 6-09.13, the Bank of North Dakota shall transfer \$800,000 from the agriculture partnership in assisting community expansion fund to the main research center. The transfer may not be made until \$1,000,000 of federal funds and \$1,000,000 of special funds from private contributions has been collected for the establishment of a beef systems center of excellence.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 21

HOUSE BILL NO. 1023

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

CAPITAL IMPROVEMENTS

AN ACT to provide an appropriation for capital projects of various state departments; to provide an appropriation for the state facility energy improvement capital project of the department of corrections and rehabilitation; to authorize the industrial commission to issue and sell evidences of indebtedness for capital projects; to provide for a legislative council study; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. PROJECT AUTHORIZATIONS. The industrial commission, acting as the North Dakota building authority, shall arrange for the funding of the projects authorized in this section, declared to be in the public interest, through the issuance of evidences of indebtedness under chapter 54-17.2, beginning with the effective date of this Act and ending June 30, 2005. The industrial commission shall issue evidences of indebtedness under this section with the condition that lease rental payments need not begin until July 1, 2005. The authority of the industrial commission to issue evidences of indebtedness under this section ends June 30, 2005, 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 are appropriated to the agencies listed in this section, beginning with the effective date of this Act and ending June 30, 2005, for the following projects:

State department of health east laboratory remodeling	\$614,865
State department of health morgue and storage annex construction	960,000
Department of corrections and rehabilitation - James River correctional center phase II	<u>2,662,890</u>
Total special funds appropriation	\$4,237,755

The bonding authority provided for the state department of health east laboratory remodeling project in the amount of \$614,865 must be reduced by any available moneys the department is able to use from the funding provided by the centers for disease control and prevention and health resources and services administration for bioterrorism programs.

SECTION 2. STATE FACILITY ENERGY IMPROVEMENT PROJECT AUTHORIZATIONS. The industrial commission, acting as the North Dakota building authority, shall arrange for the funding of the projects authorized in this section, which are described in a report dated August 29, 2002, filed with the governor by the division of community services of the department of commerce, and which are declared to be in the public interest, through the issuance of evidences of indebtedness under chapter 54-17.2 and section 54-44.5-08, beginning with the effective date of this Act and ending June 30, 2005. The authority of the industrial commission to issue evidences of indebtedness under this section ends June 30, 2005, but the industrial commission may continue to exercise all other powers

granted to it under chapter 54-17.2, section 54-44.5-08, and this Act, and comply with any covenants entered into before that date. The proceeds of the evidences of indebtedness and other available funds are appropriated to the agencies and institutions listed in this section, beginning with the effective date of this Act and ending June 30, 2005, for the following projects:

Department of corrections and rehabilitation - Missouri River correctional center	<u>\$105,326</u>
Total special funds appropriation	\$105,326

SECTION 3. LEGISLATIVE COUNCIL STUDY - CAPITAL CONSTRUCTION LEASE PAYMENT LIMITATION. The legislative council shall consider studying, during the 2003-04 interim, the provisions of section 54-17.2-23 of the North Dakota Century Code regarding the statutory limitation on the amount of capital construction lease payments paid from the general fund and the effect of increasing the percentage limitation. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 22

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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 governor, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$2,009,850
Operating expenses	265,736
Grants	760,000
Contingencies	10,000
Roughrider awards	10,800
Presidential electors	500
Governor's transition in	15,000
Governor's transition out	<u>40,000</u>
Total all funds	\$3,111,886
Less estimated income	<u>780,000</u>
Total general fund appropriation	\$2,331,886

SECTION 2. APPROPRIATION - AUTHORIZATION - GOVERNOR'S OFFICE. The governor's office may receive and expend any federal or private funds which are appropriated which become available during the biennium beginning July 1, 2003, and ending June 30, 2005.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 23

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 provide an exemption; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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, 2003, and ending June 30, 2005, as follows:

Subdivision 1.

SECRETARY OF STATE

Salaries and wages	\$2,153,618
Operating expenses	2,025,589
Petition review	8,000
Election reform	<u>9,500,000</u>
Total all funds	\$13,687,207
Less estimated income	<u>9,880,363</u>
Total general fund appropriation	\$3,806,844

Subdivision 2.

SECRETARY OF STATE - PUBLIC PRINTING

Operating expenses	<u>\$336,000</u>
Total general fund appropriation	\$336,000
Grand total general fund appropriation S.B. 2002	\$4,142,844
Grand total special funds appropriation S.B. 2002	\$9,880,363
Grand total all funds appropriation S.B. 2002	\$14,023,207

SECTION 2. EXEMPTION. The appropriation contained in subdivision 1 of section 1 of chapter 2 of the 2001 Session Laws is not subject to the provisions of section 54-44.1-11 for an amount of up to \$105,000, and this amount may be used as state matching funds for federal election reform funding available to the state, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 3. EMERGENCY. The election reform line item in subdivision 1 of section 1 and section 2 of this Act are declared to be an emergency measure.

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 24

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 amend and reenact subsection 3 of section 53-06.1-14 of the North Dakota Century Code, relating to administration of gaming stamps; to provide a contingent appropriation; to provide an exemption; to provide for racing commission expenses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$18,461,301
Operating expenses	7,995,471
Capital assets	1,830,250
Grants	5,891,560
Litigation fees	50,000
Arrest and return of fugitives	10,000
Gaming commission	5,109
Total all funds	\$34,243,691
Less estimated income	17,429,474
Total general fund appropriation	<u>\$16,814,217</u>

SECTION 2. CONTINGENT APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$240,000, or so much of the sum as may be necessary, to the attorney general for the purpose of defraying the expenses of defending the state's school finance system for the biennium beginning July 1, 2003, and ending June 30, 2005. These funds may be spent only if the attorney general is required to defend the state in a lawsuit involving the state's school finance system during the 2003-05 biennium.

SECTION 3. EXEMPTION. The appropriation contained in section 1 of chapter 3 of the 2001 Session Laws is not subject to the provisions of section 54-44.1-11 for an amount of up to \$66,000, and this amount may be used by the attorney general for defraying the expenses associated with conducting criminal background checks during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 4. ATTORNEY GENERAL REFUND 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, 2003.

SECTION 5. ESTIMATED INCOME - GAMING AND EXCISE TAX ALLOCATION FUND - LOCAL GAMING ENFORCEMENT GRANTS. The line item entitled grants in section 1 of this Act includes \$617,000 for local gaming enforcement grants.

SECTION 6. 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 \$300,000 for the biennium beginning July 1, 2003, and ending June 30, 2005. All fees collected under this section must be deposited in the attorney general's operating fund.

SECTION 7. 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, 2003, and ending June 30, 2005. All fees collected under this section must be deposited in the attorney general's operating fund.

SECTION 8. ESTIMATED INCOME - RACING PROMOTION, PURSE, AND BREEDERS' FUNDS. Notwithstanding section 53-06.2-11, the estimated income line item in section 1 of this Act includes \$50,000 from the racing promotion fund, \$50,000 from the purse fund, and \$50,000 from the breeders' fund for the purpose of defraying the administrative and operating costs of the racing commission for the biennium beginning July 1, 2003, and ending June 30, 2005.

⁵ **SECTION 9. AMENDMENT.** Subsection 3 of section 53-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

3. A licensed distributor shall affix a North Dakota gaming stamp to each deal of pull tabs and bingo cards, punchboard, sports pool board, calcutta board, and series of paddlewheel ticket cards sold and shall purchase the stamps from the attorney general for thirty-five cents each. Ten cents of each stamp sold, up to thirty-six thousand dollars per biennium, must be credited to the attorney general's operating fund to defray the costs of issuing and administering the gaming stamps.

SECTION 10. EMERGENCY. Sections 3 and 4 of this Act are declared to be an emergency measure.

Approved May 2, 2003
Filed May 2, 2003

⁵ Section 53-06.1-14 was also amended by section 1 of House Bill No. 1404, chapter 451, and section 10 of Senate Bill No. 2148, chapter 449.

CHAPTER 25

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 subsection 4 of section 54-10-01 of the North Dakota Century Code, relating to the powers and duties of the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$5,981,437
Operating expenses	<u>717,771</u>
Total all funds	\$6,699,208
Less estimated income	<u>2,117,976</u>
Total general fund appropriation	\$4,581,232

SECTION 2. APPROPRIATION. Section 1 of this Act includes an appropriation of up to \$1,264,865 in funds generated by the state auditor from political subdivision audit service fees for the period beginning July 1, 2003, and ending June 30, 2005. Any amount in excess of \$1,264,865 must be deposited in the state auditor operating account and made available for appropriation after June 30, 2005.

⁶ **SECTION 3. AMENDMENT.** Subsection 4 of section 54-10-01 of the North Dakota Century Code is amended and reenacted as follows:

⁶ Section 54-10-01 was also amended by section 4 of House Bill No. 1243, chapter 454.

4. Perform or provide for performance audits of state agencies as determined necessary by the state auditor or the legislative audit and fiscal review committee. A performance audit must be done in accordance with generally accepted auditing standards applicable to performance audits. The state auditor may not hire a consultant to assist with conducting a performance audit of a state agency without the prior approval of the legislative audit and fiscal review committee. The state auditor shall notify an agency of the need for a consultant before requesting approval by the legislative audit and fiscal review committee. The agency that is audited shall pay for the cost of any consultant approved.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 26**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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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, to the state treasurer for the purpose of defraying the expenses of the state treasurer, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$593,830
Operating expenses	122,554
In lieu of tax payments	<u>1,910,000</u>
Total general fund appropriation	\$2,626,384

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 27

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 an exemption from the provisions of section 54-44.1-11 of the North Dakota Century Code; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$12,806,112
Operating expenses	4,438,627
Capital assets	25,000
Homestead tax credit	4,000,000
Total all funds	\$21,269,739
Less estimated income	115,044
Total general fund appropriation	\$21,154,695

SECTION 2. 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 \$1,396,200 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 3. EXEMPTION. The appropriation contained in section 1 of chapter 6 of the 2001 Session Laws is not subject to the provisions of section 54-44.1-11 for an amount of up to \$110,000, and this amount may be spent for information technology projects for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 4. LEGISLATIVE COUNCIL STUDY - ELIMINATION OF ESTATE TAX. The legislative council shall consider studying, during the 2003-04 interim, with assistance from the tax commissioner, the effect on cities and counties of repeal of the estate tax. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 28**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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 special funds derived from federal funds, to the labor commissioner for the purpose of defraying the expenses of the labor commissioner, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$944,532
Operating expenses	<u>163,113</u>
Total all funds	\$1,107,645
Less estimated income	<u>229,698</u>
Total general fund appropriation	\$877,947

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 29

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 provide for repayment of funding; to provide for legislative council studies; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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 the public service commission, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$4,771,497
Operating expenses	1,197,261
Capital assets	35,011
Grants	62,000
Abandoned mined lands contractual services	3,668,492
Rail rate complaint case	<u>250,000</u>
Total all funds	\$9,984,261
Less estimated income	<u>6,072,767</u>
Total general fund appropriation	\$3,911,494

SECTION 2. SPECIAL FUNDS TRANSFER. The less estimated income line item in section 1 of this Act includes the sum of \$225,000, or so much of the sum as may be necessary, from the state rail fund, maintained by the department of transportation under section 49-17.1-02.1, and \$25,000 from other sources, to pay the costs associated with the initial stage of a rail rate complaint case. The commission must have written commitments for the \$25,000 from other sources before spending any moneys from the state rail fund.

SECTION 3. REPAYMENT OF FUNDING. The public service commission shall reimburse the state rail fund for any amounts transferred from proceeds that may result from a successful outcome of the rail rate study and rail rate complaint case.

SECTION 4. LEGISLATIVE COUNCIL STUDY - PUBLIC SERVICE COMMISSION DUTIES. The legislative council shall consider studying, during the 2003-04 interim, the feasibility and desirability of transferring inspection and standards functions performed by various state agencies to the public service commission, including the potential cost-savings and efficiencies that may be realized by training and certifying employees to conduct multiple inspection duties. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 5. LEGISLATIVE COUNCIL STUDY - PUBLIC SERVICE COMMISSION FUNDING. The legislative council shall consider studying, during the 2003-04 interim, the feasibility and desirability of funding the public service commission entirely from special fund revenue sources. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 6. EMERGENCY. The rail rate complaint case line item in section 1 and section 2 of this Act are declared to be an emergency measure.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 30**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 provide for the continuation of an agricultural pesticide and pesticide container disposal program; to amend and reenact sections 4-37-03 and 4-37-04, subsection 1 of section 19-13.1-03, and section 19-14-04 of the North Dakota Century Code, relating to powers, duties, and funding for the agriculture in the classroom program and pet food and livestock medicine registration fees; to provide for a transfer of funds; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 the agriculture commissioner, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$4,494,970
Operating expenses	3,359,825
Capital assets	8,000
Grants	100,000
Board of animal health	869,464
State meat inspection	763,461
Pride of Dakota	180,948
Wildlife services	800,000
Safe send	308,870
Noxious weeds	1,346,836
Crop protection product harmonization and registration board	<u>25,000</u>
Total all funds	\$12,257,374
Less estimated income	<u>8,068,849</u>
Total general fund appropriation	\$4,188,525

SECTION 2. ESTIMATED INCOME - ENVIRONMENT AND RANGELAND PROTECTION FUND. The estimated income line item in section 1 of this Act includes the sum of \$2,264,453, or so much of the sum as may be necessary, 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, 2003, and ending June 30, 2005.

SECTION 3. ANHYDROUS AMMONIA STORAGE INSPECTION FUND. The estimated income line item in section 1 of this Act includes the sum of \$54,496, or so much of the sum as may be necessary, 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, 2003, and ending June 30, 2005.

SECTION 4. ESTIMATED INCOME - GAME AND FISH FUND. The estimated income line item in section 1 of this Act includes the sum of \$700,000, 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, 2003, and ending June 30, 2005. The agriculture commissioner, including the board of animal health, may spend moneys from the game and fish department operating fund only after costs for the various agriculture department programs have been incurred.

SECTION 5. 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 6. PROJECT SCOPE AND EVALUATION. The project described in section 5 of this Act must occur in areas to be determined by the agriculture commissioner in consultation with the advisory board under subsection 2 of section 5 of this Act.

SECTION 7. 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.

⁷ **SECTION 8. AMENDMENT.** Section 4-37-03 of the North Dakota Century Code is amended and reenacted as follows:

4-37-03. Purpose - Powers and duties. The agriculture in the classroom council shall provide grants and contracts to individuals and organizations that conduct an agriculture in the classroom program to develop agricultural curriculum activities and train teachers in these agricultural curriculum activities for grades kindergarten through twelve in this state's public school system. The council shall work with all educators, including the superintendent of public instruction, the state board for vocational and technical education, the United States department of agriculture, and the state agriculture commissioner in accomplishing its purpose. The council shall render services consistent with this purpose which include:

1. Consultations with the state superintendent of public instruction, the state board for vocational and technical education, the state agriculture commissioner, and the United States department of agriculture.
2. Preparation of instructional, informational, and reference publications on the North Dakota agricultural economy and rural lifestyles.
3. Provide training programs for public school teachers in developed agricultural curriculum activities.
4. Encourage research on and identification of new instructional, informational, and reference publications relating to this state's agricultural economy and rural lifestyles.
5. Monitor the quality and condition of the agriculture in the classroom program.

SECTION 9. AMENDMENT. Section 4-37-04 of the North Dakota Century Code is amended and reenacted as follows:

4-37-04. Gifts and grants. In order to carry out its duties under this chapter, the agriculture in the classroom council may contract for and accept private contributions, gifts, and grants-in-aid from the federal government, private industry, and other sources. Additional income must be spent for the purpose designated, if any, in the gift, grant, or donation. The funds must be used to contract with individuals or organizations that conduct an agriculture in the classroom program to carry out the purposes of this chapter.

⁷ Section 4-37-03 was also amended by section 3 of House Bill No. 1183, chapter 138.

SECTION 10. AMENDMENT. Subsection 1 of section 19-13.1-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Each pet food and specialty pet food must be registered before being distributed in this state. The application for registration must be submitted on forms furnished by the commissioner. The application must be accompanied by a label and any other printed matter describing each product and the registration fee of ~~twenty~~ fifty one hundred dollars per product. Upon approval by the commissioner, a certificate of registration must be furnished to the applicant. Registrations are not transferable. Registration covers a two-year period beginning January first and ending December thirty-first. Registration renewals received after January thirty-first must be assessed a penalty fee of ten dollars per product. Products found marketed in this state without proper registration must be assessed the penalty fee of twenty-five dollars.

⁸ **SECTION 11. AMENDMENT.** Section 19-14-04 of the North Dakota Century Code is amended and reenacted as follows:

19-14-04. Registration fee. Prior to each two-year registration, a registration fee of ~~twenty~~ forty dollars must be paid to the ~~commissioner of~~ agriculture commissioner for each livestock medicine that is registered.

SECTION 12. AGRICULTURE IN THE CLASSROOM - 2003-05 BIENNIUM CONTRACTS. The department of agriculture shall contract for a minimum of \$100,000 of services with individuals or organizations for the agriculture in the classroom program during the 2003-05 biennium.

SECTION 13. TRANSFER. The state treasurer shall transfer \$200,000, or so much of the sum as may be necessary, from the environment and rangeland protection fund to the minor use pesticide fund, during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 14. EXPIRATION DATE. Sections 5, 6, and 7 of this Act are effective through July 31, 2007, and after that date are ineffective.

Approved May 2, 2003
Filed May 2, 2003

⁸ Section 19-14-04 was also amended by section 4 of House Bill No. 1128, chapter 185.

CHAPTER 31

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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 insurance regulatory trust fund in the state treasury, not otherwise appropriated, and from other special funds derived from federal funds and other income, to the insurance commissioner for the purpose of defraying the expenses of the insurance commissioner, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$4,698,378
Operating expenses	1,781,501
Capital assets	6,900
Total special funds appropriation	\$6,486,779

SECTION 2. APPROPRIATION - INSURANCE TAX PAYMENTS TO FIRE DEPARTMENTS AND NORTH DAKOTA FIREFIGHTER'S ASSOCIATION. There is appropriated out of any moneys in the insurance tax distribution fund in the state treasury, not otherwise appropriated, the sum of \$5,304,000, or so much of the sum as may be necessary, to the insurance commissioner, of which \$5,200,000 is for the purpose of making payments of insurance premiums to fire departments and \$104,000 is for the purpose of making two equal payments to the North Dakota firefighter's association for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 3. BONDING FUND. Section 1 of this Act includes the sum of \$35,000, 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, 2003, and ending June 30, 2005.

SECTION 4. FIRE AND TORNADO FUND. Section 1 of this Act includes the sum of \$813,576, or so much of the sum as may be necessary, from the state fire and tornado fund to pay fire and tornado fund administrative expenses for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 5. UNSATISFIED JUDGMENT FUND. Section 1 of this Act includes the sum of \$35,000, 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, 2003, and ending June 30, 2005.

SECTION 6. PETROLEUM TANK RELEASE COMPENSATION FUND. Section 1 of this Act includes the sum of \$80,000, 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, 2003, and ending June 30, 2005.

SECTION 7. ANHYDROUS AMMONIA STORAGE FACILITY INSPECTION

FUND. Section 1 of this Act includes the sum of \$175,000, 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, 2003, and ending June 30, 2005.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 32**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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 the investor education and technology fund, to the securities commissioner for the purpose of defraying the expenses of the office of the securities commissioner, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$925,523
Operating expenses	<u>466,222</u>
Total all funds	\$1,391,745
Less estimated income	<u>311,580</u>
Total general fund appropriation	\$1,080,165

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 33**SENATE BILL NO. 2012**

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

HUMAN SERVICES

AN ACT to provide an appropriation for defraying the expenses of the department of human services; to provide for the transfer of appropriation authority between agencies and institutions; to provide an exception; to provide for legislative council studies; to provide statements of legislative intent; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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 and its various divisions, for the purpose of defraying the expenses of that agency, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Subdivision 1.

ADMINISTRATION - SUPPORT

Salaries and wages	\$11,016,285
Operating expenses	33,567,188
Capital assets	2,694
Developmentally disabled facility loan fund	<u>3,261,556</u>
Total all funds	\$47,847,723
Less estimated income	<u>34,130,107</u>
Total general fund appropriation	\$13,717,616

Subdivision 2.

PROGRAM/POLICY MANAGEMENT

Salaries and wages	\$22,053,781
Operating expenses	37,381,409
Capital assets	39,672
Grants	288,837,725
Grants - Medical assistance	<u>918,049,664</u>
Total all funds	\$1,266,362,251
Less estimated income	<u>956,761,496</u>
Total general fund appropriation	\$309,600,755

Subdivision 3.

MENTAL HEALTH COMMUNITY SERVICES CONTINGENCY

Total general fund appropriation	\$250,000
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NORTHWEST HUMAN SERVICE CENTER

Total all funds	\$7,275,679
Less estimated income	<u>3,645,640</u>
Total general fund appropriation	\$3,630,039

NORTH CENTRAL HUMAN SERVICE CENTER	
Total all funds	\$14,564,870
Less estimated income	<u>6,723,674</u>
Total general fund appropriation	\$7,841,196
LAKE REGION HUMAN SERVICE CENTER	
Total all funds	\$8,420,933
Less estimated income	<u>3,782,973</u>
Total general fund appropriation	\$4,637,960
NORTHEAST HUMAN SERVICE CENTER	
Total all funds	\$19,441,183
Less estimated income	<u>11,444,820</u>
Total general fund appropriation	\$7,996,363
SOUTHEAST HUMAN SERVICE CENTER	
Total all funds	\$20,724,542
Less estimated income	<u>11,215,222</u>
Total general fund appropriation	\$9,509,320
SOUTH CENTRAL HUMAN SERVICE CENTER	
Total all funds	\$11,358,975
Less estimated income	<u>5,731,868</u>
Total general fund appropriation	\$5,627,107
WEST CENTRAL HUMAN SERVICE CENTER	
Total all funds	\$17,584,844
Less estimated income	<u>9,121,635</u>
Total general fund appropriation	\$8,463,209
BADLANDS HUMAN SERVICE CENTER	
Total all funds	\$8,924,627
Less estimated income	<u>4,558,723</u>
Total general fund appropriation	\$4,365,904
STATE HOSPITAL	
Total all funds	\$41,889,561
Less estimated income	<u>16,405,360</u>
Total general fund appropriation	\$25,484,201
DEVELOPMENTAL CENTER	
Total all funds	\$40,761,057
Less estimated income	<u>31,949,828</u>
Total general fund appropriation	\$8,811,229
Total all funds - Subdivision 3	\$191,196,271
Total estimated income - Subdivision 3	\$104,579,743
Total general fund appropriation - Subdivision 3	\$86,616,528
Grand total general fund appropriation S.B. 2012	\$410,984,899
Grand total special funds appropriation S.B. 2012	\$1,097,596,346
Grand total all funds appropriation S.B. 2012	\$1,508,581,245

SECTION 2. APPROPRIATION - HEALTH CENTER GRANTS. 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 department of human services for the purpose of providing grants to community entities to support community development and grant writing services for the purpose of health center grant application submission, for the biennium

beginning July 1, 2003, and ending June 30, 2005. The department may not award an individual grant of more than \$10,000.

SECTION 3. APPROPRIATION - LEGISLATIVE INTENT. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, or so much of the sum as may be necessary, and from federal funds, the sum of \$2,125,000 to the department of human services for the purpose of supplementing other appropriations provided for the medical assistance program, the developmental center, the state hospital, and home and community-based services programs for the biennium beginning July 1, 2003, and ending June 30, 2005. It is the intent of the legislative assembly that whenever possible, the department use the general fund moneys appropriated under this section to maximize federal funding for these programs and functions.

SECTION 4. LEGISLATIVE INTENT - DEVILS LAKE CHILD SUPPORT ENFORCEMENT UNIT. It is the intent of the legislative assembly that the fifty-ninth legislative assembly consider removing general fund support for the Devils Lake child support enforcement unit reservation project if the project's performance results do not improve during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 5. LANDS AND MINERALS TRUST FUND. The sum of \$3,261,556, or so much of the sum as may be necessary, included in the developmentally disabled facility loan fund line item in subdivision 1 of section 1 of this Act, may be expended by the department of human services from the lands and minerals trust fund for the purpose of making payments of principal and interest to the common schools trust fund on any loans made from it pursuant to the developmentally disabled loan fund program nos. 2 and 3, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 6. HEALTH CARE TRUST FUND - TRANSFER TO GENERAL FUND. The office of management and budget shall transfer \$35,911,035 from the health care trust fund to the general fund during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 7. 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 1 of this Act, and between subdivisions within section 1 of this Act for the biennium beginning July 1, 2003, and ending June 30, 2005. 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, 2004, any transfers made in excess of \$50,000 and to the appropriations committees of the fifty-ninth legislative assembly regarding any transfers made pursuant to this section.

SECTION 8. FEDERAL TANF BLOCK GRANT PROGRAMS - EXPENDITURE LIMIT. The department of human services shall make the changes necessary to programs utilizing funding from the temporary assistance for needy families (TANF) block grant to provide that by the end of the 2003-05 biennium, the cumulative funding anticipated to be spent for these programs for each fiscal year does not exceed North Dakota's annual federal TANF block grant allocation, including any incentive or bonus grants awarded to North Dakota.

SECTION 9. MEDICAL SERVICES - COPAYMENTS AND SERVICE LIMITS. The department of human services shall establish a six dollar copayment for medical assistance recipients for each emergency room visit that is not

designated an emergency service by the medical services provider. The department of human services shall establish other service copayments or limits and make other programmatic changes within the medical services program to operate the program within the funding levels approved by the fifty-eighth legislative assembly for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 10. NURSING HOME RATES - EXCEPTION - DIRECT CARE LIMIT. Notwithstanding subsection 4 of section 50-24.4-10, the department of human services shall establish an eighty-five dollar per diem limit, adjusted for inflation under subsection 5 of section 50-24.4-10, on allowable operating costs for direct care services of nursing facilities for purposes of determining nursing facility payment rates for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 11. SUPPORTED LIVING ARRANGEMENTS FOR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES - LOCAL MATCHING FUNDS - FUNDING ALLOCATION. The grants - medical assistance line item in subdivision 2 of section 1 of this Act includes \$200,000 from the general fund for supported living arrangement services for individuals with developmental disabilities. This funding may be spent only if local or private funding is provided for these services on a dollar-for-dollar matching fund basis. The department shall allocate the funding appropriated for this purpose proportionately to each human service region of the state based on the number of individuals with developmental disabilities seeking supported living arrangement services in each region for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 12. LEGISLATIVE INTENT - VOCATIONAL REHABILITATION - SURVEY TIME PERIOD. It is the intent of the legislative assembly that the department of human services only survey vocational rehabilitation clients who become employed regarding job retention and job satisfaction after three months of employment if allowed under federal regulations for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 13. COMPULSIVE GAMBLING TREATMENT SERVICES - LIMITATION. Notwithstanding section 1 of House Bill No. 1243, as approved by the fifty-eighth legislative assembly, the department of human services may not spend in excess of \$400,000 for compulsive gambling treatment services for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 14. LEGISLATIVE COUNCIL STUDY - HUMAN SERVICES ADMINISTRATIVE COSTS. The legislative council shall consider studying, during the 2003-04 interim, administrative costs of human service programs, including costs incurred by the central office of the department of human services, human service centers, and county social services. If studied, the legislative council shall review the effects of the 1997 "swap" legislation on state and county human service program costs. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 15. LEGISLATIVE COUNCIL STUDY - CHILDREN WITH SPECIAL HEALTH NEEDS. The legislative council shall consider studying, during the 2003-04 interim, programs providing services to children with special health care needs in North Dakota and service needs of these children which are not available under current programs. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 16. LEGISLATIVE COUNCIL STUDY - MEDICAID ADVISORY COUNCIL. The legislative council shall consider studying, during the 2003-04 interim, the feasibility and desirability of establishing an advisory council for the medical assistance program of the department of human services. If studied, the legislative council shall consider including representatives of private health care providers on the advisory council. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 17. LEGISLATIVE COUNCIL STUDY - LONG-TERM CARE CONTINUUM. The legislative council shall consider studying, during the 2003-04 interim, North Dakota's long-term care continuum of services, including service delivery methods and payment systems. If studied, the legislative council shall consider the cost-effectiveness of the programs and the appropriateness of rate structures and the nursing home equalized rate policy. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 18. EMERGENCY. The total all funds line item for the state hospital in subdivision 3 of section 1 of this Act includes \$400,000 from special funds for capital construction projects, and the appropriation of that amount is declared to be an emergency measure.

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 34**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; to provide for an exemption; to provide for the distribution of special education payments; to provide statements of legislative intent; to create and enact a new section to chapter 54-52 of the North Dakota Century Code, relating to participation by nonteaching employees of the superintendent of public instruction in the public employees retirement system; to amend and reenact subsection 3 of section 15-39.1-09, subsection 3 of section 54-52-01, subsection 5 of section 54-52-17.4, and subsection 1 of section 54-52.1-03.2 of the North Dakota Century Code, relating to participation by nonteaching employees of the superintendent of public instruction in the public employees retirement system; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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 these agencies, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Subdivision 1.

DEPARTMENT OF PUBLIC INSTRUCTION

Salaries and wages	\$9,277,686
Operating expenses	13,057,823
Capital assets	15,000
Grants - State school aid	489,379,990
Grants - Teacher compensation payments	51,854,000
Grants - Tuition apportionment	69,495,371
Grants - Special education	49,898,695
Grants - Other grants	182,255,244
Total all funds	<u>\$865,233,809</u>
Less estimated income	<u>266,058,803</u>
Total general fund appropriation	\$599,175,006

Subdivision 2.

STATE LIBRARY

Salaries and wages	\$2,078,571
Operating expenses	1,181,647
Grants	1,396,807
Total all funds	<u>\$4,657,025</u>
Less estimated income	<u>1,629,979</u>
Total general fund appropriation	\$3,027,046

Subdivision 3.

SCHOOL FOR THE DEAF

Salaries and wages	\$4,809,808
Operating expenses	1,102,160
Capital assets	<u>32,723</u>
Total all funds	\$5,944,691
Less estimated income	<u>871,449</u>
Total general fund appropriation	\$5,073,242

Subdivision 4.

VISION SERVICES - SCHOOL FOR THE BLIND

Salaries and wages	\$2,540,292
Operating expenses	698,683
Capital assets	<u>18,233</u>
Total all funds	\$3,257,208
Less estimated income	<u>1,167,383</u>
Total general fund appropriation	\$2,089,825
Grand total general fund appropriation Section 1 of S.B. 2013	\$609,365,119
Grand total special funds appropriation Section 1 of S.B. 2013	\$269,727,614
Grand total all funds appropriation Section 1 of S.B. 2013	\$879,092,733

SECTION 2. APPROPRIATION. There is appropriated from special funds derived from federal funds and other income the sum of \$10,000,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of providing grants for the period beginning with the effective date of this Act and ending June 30, 2003.

SECTION 3. APPROPRIATION - TUITION APPORTIONMENT. The sum of \$69,495,371, included in the grants - tuition apportionment line item in subdivision 1 of section 1 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, 2003, and ending June 30, 2005.

SECTION 4. EXEMPTION. The appropriation contained in subdivision 1 of section 1 of chapter 13 of the 2001 Session Laws is not subject to the provisions of section 54-44.1-11 for an amount of up to \$105,000, and this amount may be used by the department of public instruction in conjunction with special funds received by the department for the purpose of providing a grant to fund the north central council of school television's licensing of educational television programs for classroom use by North Dakota elementary and secondary schools.

SECTION 5. LEGISLATIVE INTENT - ADULT EDUCATION PROGRAM. It is the intent of the legislative assembly that the additional \$20,000 of funding from the general fund provided for the department of public instruction's adult education program is to be distributed by the department to address salary concerns for those teachers who have not received the teacher compensation payments.

SECTION 6. 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 line items in subdivision 1 of section 1 of this Act in payment of grants for educational services that were due in the 2001-03 biennium but which were not filed, claimed, or properly supported by the education provider until after June 30, 2003.

SECTION 7. DISTRIBUTION OF SPECIAL EDUCATION AID. The sum of \$49,898,695, included in the grants - special education line item in subdivision 1 of section 1 of this Act, must be distributed as follows:

1. Thirteen million dollars to reimburse school districts or special education units for excess costs incurred relating to contracts for students with disabilities.
2. Four hundred thousand dollars 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.
3. Any amount remaining in the line item must be distributed on a per student basis as required by section 15.1-27-10, excluding reimbursements for student contracts and gifted and talented programs. State special education payments distributed as required by section 15.1-27-10 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 8. PAYMENTS FOR LIMITED ENGLISH PROFICIENT STUDENTS. Payments to school districts educating limited English proficient students, as provided in section 15.1-27-12, must be made by the superintendent of public instruction during the biennium beginning July 1, 2003, and ending June 30, 2005, using up to \$650,000 of the amount included in the grants - state school aid line item in subdivision 1 of section 1 of this Act.

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. DISPLACED HOMEMAKER FUND. The sum of \$251,747, included in the estimated income line item in subdivision 1 of section 1 of this Act, is from the displaced homemaker fund and must be used by the superintendent of public instruction for the purpose of providing services for displaced homemakers, as provided in chapter 14-06.1, during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 11. STATE AID TO PUBLIC LIBRARIES. The line item entitled grants in subdivision 2 of section 1 of this Act includes \$844,307 for aid to public libraries, of which no more than one-half is to be expended during the fiscal year ending June 30, 2004.

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 1 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. LEGISLATIVE INTENT - NO CHILD LEFT BEHIND ACT. It is the intent of the legislative assembly that the department of public instruction have a primary focus of being an advocate and facilitator for those schools having difficulty complying or those not in compliance with the federal mandates contained in the federal No Child Left Behind Act, and the department seek to promulgate the most flexible interpretation of the No Child Left Behind Act to assist public schools in this state.

SECTION 14. AMENDMENT. Subsection 3 of section 15-39.1-09 of the North Dakota Century Code is amended and reenacted as follows:

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 16 of this Act.

⁹ **SECTION 15. AMENDMENT.** Subsection 3 of section 54-52-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "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 who elect to remain members of the retirement system; provided, that judges of the supreme and district courts eligible under section 54-52-02.3 ~~and~~, appointed officials who elect to participate under section 54-52-02.5, 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 16 of this Act are eligible employees and shall participate in the public employees retirement system. 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 16. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Participation by nonteaching employees of the office of the superintendent of public instruction. Notwithstanding any other provision of law, between the effective date of this Act and five p.m. on August 29, 2003, a nonteaching employee of the superintendent of public instruction, including the

⁹ Section 54-52-01 was also amended by section 1 of Senate Bill No. 2033, chapter 497, and section 2 of Senate Bill No. 2058, chapter 498.

superintendent of public instruction, 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 superintendent of public instruction. 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, 2003, plus interest at the rate of seven and one-half percent from July 1, 2003, until the date the amount is transferred to the public employees retirement system or the employee's account balance as of 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 office of the superintendent of public instruction at the date of the transfer. The superintendent of public instruction 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.

¹⁰ **SECTION 17. AMENDMENT.** Subsection 5 of section 54-52-17.4 of the North Dakota Century Code is amended and reenacted as follows:

5. A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the member's most recent monthly salary, times the number of months of credit being purchased, plus interest at a rate determined by the board. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 ~~one percent~~ the percentage required by section 54-52.1-03.2 times the member's present monthly salary times the member's months of credit being purchased. For credit before July 1, 1966, no contribution is required.

SECTION 18. 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

¹⁰ Section 54-52-17.4 was also amended by section 10 of Senate Bill No. 2058, chapter 498, and section 11 of Senate Bill No. 2058, chapter 498.

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 16 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 16 of this Act, 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 salary or wages of those nonteaching employee members, beginning on the first of the month following the transfer under section 16 of this Act 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. 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 19. 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 sections 15 through 18 of this Act, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 20. EMERGENCY. Sections 2 and 4 of this Act are declared to be an emergency measure.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 35**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. 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, to the committee on protection and advocacy for the purpose of defraying the expenses of the committee on protection and advocacy and related services, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Total all funds	\$3,226,255
Less estimated income	<u>2,443,532</u>
Total general fund appropriation	\$782,723

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 36**SENATE BILL NO. 2015**

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

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 for various transfers and financial transactions; to provide exemptions from section 54-44.1-11 of the North Dakota Century Code; to create and enact a new section to chapter 15-10, a new subsection to section 53-06.2-04, and a new section to chapter 54-59 of the North Dakota Century Code, relating to contracts for the provision of meals by institutions of higher education, the duties of the racing commission, and required information technology services from the information technology department; to create and enact section 18 of House Bill No. 1414, section 9 of House Bill No. 1012, section 16 of House Bill No. 1015, and section 2 of Senate Bill No. 2176 as approved by the fifty-eighth legislative assembly, relating to reporting disease outbreaks and quarantine of individuals and declaring that Act an emergency measure, to the speed limit on paved two-lane county and township highways and declaring that Act an emergency measure, to the partnership in assisting community expansion fund, the agriculture partnership in assisting community expansion fund, and the beginning farmer loan fund and declaring that Act an emergency measure, and to participation by retired political subdivision employees in the uniform group insurance program and declaring that Act an emergency measure; to amend and reenact sections 15-52-03, 15.1-31-07, 26.1-21-09, 34-06-04.1, 54-35-18, 54-35-18.1, and 54-35-18.2, subsection 2 of section 54-44.1-06, section 54-44.1-12, the new section to chapter 55-02 as created by section 2 of Senate Bill No. 2249 as approved by the fifty-eighth legislative assembly, and section 57-51.1-07.2 of the North Dakota Century Code, relating to tuition apportionment payments, the membership of the medical center advisory council, the reserve amount in the bonding fund, overtime or work-period claims, the expiration date and membership of the electric industry competition committee, preparation of budget data, budget allotments, the powers of the state historical board, and payments into the permanent oil tax trust fund; to provide statements of legislative intent; to require reports to the legislative assembly; to provide an exception to section 54-44.1-06 of the North Dakota Century Code, relating to the preparation of certain appropriation bills; to provide for reports to the budget section; to provide for a legislative council study; to provide for additional lodging reimbursement for members of the legislative assembly; to provide for state employee reductions and compensation pools; to provide for the transfer of state agency information technology positions; to provide an appropriation; to provide for a tax amnesty program; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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 various divisions under the supervision of the director of the office of management and budget for the purpose of defraying their expenses, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$15,388,231
Operating expenses	11,328,756
Capital assets	733,000
Grants	<u>179,000</u>
Total all funds	\$27,628,987
Less estimated income	<u>7,888,476</u>
Total general fund appropriation	\$19,740,511

SECTION 2. CAPITOL BUILDING FUND. The amount of \$25,000, or so much of the sum as is necessary, included in the estimated income line item in section 1 of this Act, is to be spent by the administration division from the capitol building fund for capitol grounds planning during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 3. EXEMPTION. The amount appropriated for the fiscal management division, as contained in subdivision 1 of section 1 of chapter 15 of the 2001 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, 2003, and ending June 30, 2005.

SECTION 4. INTENT. Within the authority included in section 1 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	449,960
Firefighter's association	126,000
Unemployment insurance	1,500,000
Capitol grounds planning commission	25,000
State consultant	120,000

SECTION 5. TRANSFER. During the biennium beginning July 1, 2003, and ending June 30, 2005, the director of the office of management and budget is authorized to transfer \$2,000,000 from the lands and minerals trust fund to the general fund.

SECTION 6. TRANSFER. During the biennium beginning July 1, 2003, and ending June 30, 2005, the director of the office of management and budget is authorized to transfer \$11,910,000 to the general fund from the permanent oil tax trust fund.

SECTION 7. FIRE AND TORNADO FUND. The amount of \$126,000, or so much of the amount as is necessary, included in the estimated income line item in section 1 of this Act, is from the fire and tornado fund.

SECTION 8. BONDING FUND TRANSFER TO STATE GENERAL FUND.

The insurance commissioner shall transfer to the general fund in the state treasury the sum of \$2,800,000 from the state bonding fund. The moneys must be transferred in such amounts and at such times as requested by the director of the office of management and budget during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 9. BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND.

During the biennium ending June 30, 2005, the industrial commission shall transfer to the state general fund up to \$60,000,000 from the current earnings and the accumulated undivided profits of the Bank of North Dakota. No more than \$15,000,000 of the amount transferred may come from accumulated undivided profits. The moneys must be transferred in the amounts and at such times as requested by the director of the office of management and budget.

SECTION 10. CONTINGENT BANK OF NORTH DAKOTA TRANSFERS TO STATE GENERAL FUND - BUDGET SECTION APPROVAL.

If, during the biennium ending June 30, 2005, the director of the office of management and budget determines through revised projections that general fund revenue collections will not meet the revenues as forecast in the March 2003 legislative forecast, the industrial commission shall transfer to the state general fund an additional amount, as determined by the director of the office of management and budget and approved by the budget section, from the earnings and accumulated and undivided profits of the Bank of North Dakota. The moneys must be transferred in amounts and at such times as requested by the director of the office of management and budget. The additional amount transferred may not exceed the lesser of \$9,000,000 or the revenue shortfall of actual collections compared to the March 2003 legislative forecast. The director may determine what portion of the shortfall will be covered by the transfer pursuant to this section and what portion will be covered by allotment pursuant to section 54-44.1-12.

SECTION 11. BANK OF NORTH DAKOTA TRANSFERS - LIMITATIONS.

Any transfer authorized by the fifty-eighth legislative assembly may only be made to the extent the transfer does not reduce the Bank's capital structure below \$140,000,000.

SECTION 12. STUDENT LOAN TRUST TRANSFER TO STATE GENERAL FUND.

The industrial commission shall transfer to the general fund in the state treasury the sum of \$11,000,000 from the North Dakota student loan trust. The moneys must be transferred in such amounts and at such times as requested by the director of the office of management and budget during the biennium beginning July 1, 2003, and ending June 30, 2005, 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 13. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Contract - Preparation and provision of meals - Policy. 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, provided the institution first establishes a policy regarding such contracts and specifically addressing issues related to competition with private sector entities. 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.

¹¹ **SECTION 14. AMENDMENT.** Section 15-52-03 of the North Dakota Century Code as amended in section 1 of Senate Bill No. 2282, as approved by the fifty-eighth legislative assembly, is amended and reenacted as follows:

15-52-03. Medical center advisory council - Members, terms, meetings.

1. To assure the proper coordination and integration of the North Dakota state medical center with all other health and welfare activities of the state, a permanent medical center advisory council is established to advise, consult, and make recommendations to the university administration, and to the several agencies represented on the council concerning the program of the North Dakota state medical center, the adaptation of the medical center to the needs of the state and to the requirements and facilities of the several agencies involved, and the use of the North Dakota state medical center and its facilities by the various institutions and agencies of the state and its political subdivisions.
2. The council consists of fourteen members:
 - a.
 - (1) Two members of the senate ~~and two~~, one of whom must be from the majority party and one of whom must be from the minority party, selected by the chairman of the legislative council; and
 - (2) Two members of the house of representatives, one of whom must be from the majority party and one of whom must be from the minority party, to be selected by the chairman of the legislative council;
 - b. One member selected by each of the following:
 - (1) The department of human services;
 - (2) The state board of higher education;
 - (3) The state department of health;
 - (4) The North Dakota medical association;
 - (5) The North Dakota healthcare association; and
 - (6) The veterans administration hospital in Fargo; and
 - c. One member selected by the dean of the university of North Dakota medical school from each of the four campus areas of the medical school with headquarters in Bismarck, Fargo, Grand Forks, and Minot.

¹¹ Section 15-52-03 was also amended by section 1 of Senate Bill No. 2282, chapter 141.

3. The representatives named by the state agencies and boards must be selected to serve as members of the medical center advisory council for periods of at least one year, but may not serve longer than their term of office on the public agency. The representatives from the North Dakota state medical association and the North Dakota healthcare association serve a term of three years or until their successors are named and qualified.
4. The council shall name its own chairman and the dean of the university of North Dakota medical school shall serve as executive secretary of the council. The council shall meet not less than twice each year, and, from time to time, on its own motion or upon request of the university administration, to consider plans and programs of action for the North Dakota state medical center and make its recommendations to the several agencies of the state and political subdivisions involved and to the legislative assembly.

SECTION 15. 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 ~~the provisions of~~ 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 16. AMENDMENT. Section 26.1-21-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-09. Premiums - Amount to whom paid - Minimum. The premium for a blanket bond must be determined by the commissioner. Premiums must be paid in advance by the proper authority of the state, or of the political subdivision of the state, from its treasury, to the state treasurer who shall keep the same in the fund. The state treasurer shall issue receipts in triplicate. The treasurer shall file one of such receipts in the treasurer's office, and shall mail one to the official making such payment and one to the commissioner. The minimum premium for each bond must be two dollars and fifty cents per year. Payments must be made for one year or for such longer terms as the commissioner may prescribe. From and after July 1, 1953, the premiums referred to in this section must be waived until the reserve fund of the state bonding fund has been depleted below the sum of two ~~and one-half~~ million dollars. The collection of premiums must be resumed on the bonds, at the rates ~~herein set forth~~ provided under this section, whenever the reserve fund is depleted below the sum of two ~~and one-half~~ million dollars. The premiums must continue to be collected until the reserve fund reaches a total of three million dollars, at which time all premiums must again be waived until the reserve fund has been depleted below the sum of two ~~and one-half~~ million dollars.

SECTION 17. AMENDMENT. Section 34-06-04.1 of the North Dakota Century Code is amended and reenacted as follows:

34-06-04.1. Compensatory time, overtime, and work-period claims. The state or a political subdivision of the state may provide for compensatory time and for

a work period for compensatory time and overtime calculation for its employees if the state or political subdivision complies with the requirements of the Fair Labor Standards Act of 1938, as amended, [Pub. L. 75-718; 52 Stat. 1060; 29 U.S.C. 206 201 et seq.] and any rules and interpretations adopted by the United States department of labor. The authority provided in this section applies in any proceeding brought after June 30, 2003, with respect to compensatory time or overtime earned regardless of when the work in question was performed.

SECTION 18. A new subsection to section 53-06.2-04 of the North Dakota Century Code is created and enacted as follows:

Reinstate race dates and issue a license under the certificate system to any racetrack in the state which was operational after December 31, 2000.

SECTION 19. AMENDMENT. Section 54-35-18 of the North Dakota Century Code is amended and reenacted as follows:

54-35-18. (Effective through August 1, 2003 2007) Electric industry competition - Need for study. 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.

SECTION 20. AMENDMENT. Section 54-35-18.1 of the North Dakota Century Code is amended and reenacted as follows:

54-35-18.1. (Effective through August 1, 2003 2007) Electric industry competition committee - Composition.

1. The legislative council shall appoint a committee to study electric industry competition.
2. The committee shall study the impact of competition on the generation, transmission, and distribution of electric energy within this state and on the state's electric suppliers.
3. As used in sections 54-35-18 through 54-35-18.2, "electric suppliers" means public utilities regulated under title 49, rural electric cooperatives organized under chapter 10-13, municipal electric utilities organized under chapters 40-33 and 40-33.2, and power marketers.
4. The committee consists of:
 - a. ~~Three or four~~ Six members of the house of representatives, ~~no more than two of whom may be from the same political party~~ four of whom must be from the majority political party and two of whom must be from the minority political party.

- b. ~~Three or four~~ Six members of the senate, ~~no more than two of whom may be from the same political party~~ four of whom must be from the majority political party and two of whom must be from the minority political party.

5. The chairman of the legislative council shall name one of the members as chairman.

SECTION 21. AMENDMENT. Section 54-35-18.2 of the North Dakota Century Code is amended and reenacted as follows:

54-35-18.2. (Effective through August 1, 2003 2007) Electric industry competition committee - Study areas. The electric industry competition committee shall study this state's electric industry competition and electric suppliers and shall report to the legislative council in the same manner as do other interim legislative council committees, concerning the following issues:

1. Financial issues, including:
 - a. The interests of residential customers, including:
 - (1) Fairness of rates, terms, and conditions of service for services chosen.
 - (2) Affordability of rates, bills, and services.
 - (3) Stability and predictability of rates and bills.
 - (4) Reliability and quality of power supply.
 - (5) Assurance that rates, terms, and conditions are nondiscriminatory.
 - (6) Ability of customers to understand potential energy choices.
 - (7) Importance of a fair dispute resolution process.
 - (8) Potential for rates to reflect the customer's desired level of energy reliability and availability.
 - b. The interests of small business customers, large business customers, shareholders, and other stakeholders, including:
 - (1) Fairness of rates, terms, and conditions of service for the services chosen by customers.
 - (2) Affordability of rates, bills, and services for customers.
 - (3) Stability and predictability of customers' rates and bills.
 - (4) Assurance that rates, terms, and conditions are nondiscriminatory for all customers.
 - (5) Ability of customers to understand potential energy choices and the implications of these choices.

- (6) Importance of a fair dispute resolution process for customers.
 - (7) Potential for rates to reflect the customer's desired level of energy reliability and availability.
 - c. Financial integrity of and cost of capital to electric power suppliers.
 - d. Taxes paid by electric suppliers, including franchise taxes, excise taxes, income taxes, ad valorem taxes, in lieu taxes, and real and personal property taxes.
 - e. Tax implications to local governments.
 - f. Quantification and recovery of stranded investments by electric power suppliers, including those resulting from:
 - (1) Customers who have a legal obligation to bear certain costs, who find a way to avoid those obligations, and who leave without paying costs incurred on the customer's behalf; and
 - (2) The costs of investments that exceed their value in the competitive market.
 - g. Pricing of transmission and distribution services.
 - h. Pricing and rate subsidies for all classes of customers.
 - i. Unbundling of costs of services.
2. Legal issues, including:
- a. State, tribal, and federal jurisdiction.
 - b. State statutory and regulatory constraints and oversight of the electric industry.
 - c. Those related to the federal energy regulatory commission.
 - d. Commerce clause constraints.
 - e. Review of existing state laws, rules, and constitutional provisions that affect the generation, transmission, and distribution of electric energy, including the need and appropriateness of regulatory reforms for services that will continue to be provided by a regulated utility.
 - f. Interstate reciprocity and the regional nature of the industry.
 - g. Continuing obligations of an electric supplier to serve customers.
 - h. Use and protection of proprietary information in a competitive market.

3. Social issues, including:
 - a. Planning and operation of electric suppliers, including integrated resource planning.
 - b. Efficiency and sufficiency of an aggregate supply of energy.
 - c. Environmental impacts.
 - d. Impact on the development and use of renewable resources.
 - e. Appropriate and proper method of recovery of the cost of social, low income, and noneconomic renewable energy programs in order to ensure that costs are fairly and equitably shared among all customers of electric energy.
4. Issues related to system planning, operation, and reliability, including:
 - a. Electric system reliability.
 - b. Provisions by which customers would be permitted to have a choice of generation providers.
 - c. Applicability of regulatory reliability criteria to nonutility market participants.
 - d. Form and requirements of contracts for the sale and purchase of electric energy.
 - e. Requirements for metering energy usage at the customer's location.
 - f. Designation and regulation of ancillary services.
5. Identification and review of potential market structures, including:
 - a. Possible market structures for a deregulated generation market and transmission market and whether these structures should be mandated or allowed to form voluntarily.
 - b. Formation of market segments in response to customer requirements.
 - c. Impact on the investment stability of the electric utility industry.
 - d. Impact on multipurpose entities.
 - e. Potential to improve economic efficiency.
 - f. Size of the market and the extent to which its size impacts the level of benefits for customers or groups of customers.
 - g. Ability of participants with control over the electricity generation and transmission system to exercise market power over pricing or the need for controls to prevent the exercise of market power.

- h. Controls or bans on corporate relationships between regulated utilities and emerging competitive sectors.
 - i. Barriers to achieving nondiscriminatory competition among electric suppliers, including review of federal and state tax issues, availability of federal subsidies to certain energy suppliers, application of federal laws that impose regulatory requirements on the electric utility industry, and jurisdiction of the federal energy regulatory commission over competitors.
 - j. Viability of all customers to participate in and benefit from a competitive electricity market, including:
 - (1) Risks and responsibilities that customers or classes of customers incur by participating in a competitive market.
 - (2) Costs of gathering, processing, and managing information on the price and quality of electricity.
 - (3) Benefits to customers or classes of customers from participation in a competitive electricity market.
6. Whether and to what extent power produced by the Garrison dam should be taxed by the state.
7. The source and cost of power supplied to the state's Indian reservations.
8. Other issues related to the generation, transmission, and distribution of electric energy.

¹² **SECTION 22. AMENDMENT.** Subsection 2 of section 54-44.1-06 of the North Dakota Century Code is amended and reenacted as follows:

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.

¹³ **SECTION 23. AMENDMENT.** Section 54-44.1-12 of the North Dakota Century Code is amended and reenacted as follows:

¹² Section 54-44.1-06 was also amended by section 36 of House Bill No. 1003, chapter 3.

¹³ Section 23 was vetoed by the Governor, see chapter 572.

54-44.1-12. Control over rate of expenditures. The director of the budget shall exercise continual control over the execution of the budget affecting the departments and agencies of state government, with the exception of the legislative and judicial branches. Execution means the analysis and approval of all commitments for conformity with the program provided in the budget, frequent comparison of actual revenues and budget estimates, and on the basis of these analyses and comparisons control the rate of expenditures through a system of allotments. The allotment must be made by specific fund and all departments and agencies that receive moneys from that fund must be allotted on a uniform percentage basis, except that appropriations to the department of public instruction for foundation aid, transportation aid, and special education aid may only be allotted to the extent that the allotment can be offset by transfers from the foundation aid stabilization fund. Any allotment must be made to the extent necessary to address any projected deficiency appropriations for agencies receiving moneys from the fund. Before an allotment is made which will reduce the amount of funds which can be disbursed pursuant to an appropriation or before an allotment disallowing a specific expenditure is made, the director shall find one or more of the following circumstances to exist:

1. The moneys and estimated revenues in a specific fund from which the appropriation is made are insufficient to meet all legislative appropriations from the fund.
2. The payment or the obligation incurred is not authorized by law.
3. The expenditure or obligation is contrary to legislative intent as recorded in any reliable legislative records, including:
 - a. Statements of legislative intent expressed in enacted appropriation measures or other measures enacted by the legislative assembly; and
 - b. Statements of purpose of amendment explaining amendments to enacted appropriation measures, as recorded in the journals of the legislative assembly.
4. Circumstances or availability of facts not previously known or foreseen by the legislative assembly which make possible the accomplishment of the purpose of the appropriation at a lesser amount than that appropriated.

¹⁴ **SECTION 24.** A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

Required use of electronic mail, file and print server administration, data base administration, and application server and hosting services. Each state agency and institution, excluding the legislative and judicial branches, the institutions under the control of the board of higher education, the public employees retirement system, the retirement and investment office, and the attorney general, which desires electronic mail, file and print server administration, data base administration, storage, and application server and hosting services shall obtain those services from the

¹⁴ Section 24 was vetoed by the Governor, see chapter 572.

department. The chief information officer may exempt from the application of this section any agency that demonstrates its current services are more appropriate for the specific needs of that agency than the services available from the department.

¹⁵ **SECTION 25. AMENDMENT.** The new section to chapter 55-02 of the North Dakota Century Code as created by section 2 of Senate Bill No. 2249, as approved by the fifty-eighth legislative assembly, is amended and reenacted as follows:

Protection of public health and safety on sites having a public function.

Notwithstanding any other provision of law, if the state or a political subdivision has a property interest in real property and that property has an existing public function in addition to any historical site registration or historical significance determination, the governing body of the agency or political subdivision owning the property interest may, subject to the following provisions, improve, alter, modify, or destroy that property if the agency or governing body determines that action is necessary to protect public health or safety, to provide access for disabled persons, or to ensure structural integrity. If an action is to be taken by an agency or governing body under this section, notice of intent to take the action must be given to the director at the onset of the planning process. At the director's request, the agency or governing body shall inform the director of each meeting at which planning or decisions on a project are on the agenda. At each meeting, the agency or governing body shall provide the director with an opportunity to comment or provide preservation funding for the proposed project and the agency or governing body shall consider the director's comments or offers of funding in the development and implementation of the project. If the agency or governing body and the director do not agree on the action to be taken, the differences must be submitted to a mediator selected by the governor to facilitate a consensus between the parties. The cost of the mediator must be shared equally by the parties. The mediator shall issue a report within sixty days of appointment by the governor. The report of the mediator must be sent to the director and must be published once in the official newspaper of the state and political subdivision. Although the agency or governing body may take the action it deems necessary, the agency or governing body shall make all reasonable effort to preserve the historical characteristics of a site taking into consideration economic and technical feasibility. The decision of the agency or governing body must be published notify the director of its decision and must publish it once in the official newspaper of the state and political subdivision. After mediation, if any, if the governing body of a political subdivision determines to proceed with actions that will result in completely demolishing, removing, or significantly degrading the historical characteristics of a building or real property, a resident of the political subdivision where the building or real property is located may submit a written notice to the county auditor of intention to petition for a public vote. The notice must be filed with the county auditor within fourteen days of the publication of the decision of the governing body. A petition for a public vote must contain the names of at least ten percent of the qualified electors from that governing body's jurisdiction who voted in the last general election and must be filed with the county auditor within one hundred twenty days of the governing body's publication of notice of its final action. If a petition is filed, the matter must be submitted for a vote of the qualified electors at the next special, primary, or general election held in that jurisdiction. All actions to remove, demolish, or significantly degrade the historical characteristics of a building or real property are stayed for fourteen days after the governing body's publication of

¹⁵ Section 55-02-07.2 was amended by section 2 of Senate Bill No. 2249, chapter 511.

notice of its final action, and if notice of intention to seek a public vote is filed, actions are stayed until either the petition fails or the public vote is held. If the political subdivision is a home rule jurisdiction with its own referendum procedures, however, the home rule referendum procedures apply to the action of the governing body.

SECTION 26. AMENDMENT. Section 57-51.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

57-51.1-07.2. Permanent oil tax trust fund - Deposits - Interest - Adjustment of distribution formula. At the end of any biennium beginning after June 30, 1997, all revenue deposited in the general fund during that biennium and derived from taxes imposed on oil and gas under chapters 57-51 and 57-51.1 which exceeds ~~sixty-two~~ seventy-one 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. ~~At the end of the 1995-97 biennium all revenue deposited in the general fund during that biennium and derived from taxes imposed on oil and gas under chapters 57-51 and 57-51.1 which exceeds fifty-six million three hundred thousand dollars must be transferred by the state treasurer to a special fund in the state treasury known as the permanent oil tax trust fund.~~ 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 two-thirds vote of the members elected to each house of the legislative assembly.

If the distribution formulas under chapter 57-51 or 57-51.1 are amended effective after June 30, 1997, the director of the budget shall adjust the ~~sixty-two~~ seventy-one million dollar amount in this section by the same percentage increase or decrease in the amount of revenue allocable to the general fund after the change in the allocation formula, and transfers to the permanent oil tax trust fund shall thereafter be made using that adjusted figure so that the dollar amount of the transfers to the permanent oil tax trust fund is not increased or decreased merely because of changes in the distribution formulas.

Notwithstanding section 54-27.2-02, the state treasurer shall make the transfers required by this section before calculating any general fund revenue balance available for transfer to the budget stabilization fund under chapter 54-27.2. In this section, "at the end of any biennium" has the same meaning as in section 54-27.2-02.

SECTION 27. LEGISLATIVE INTENT - SUPPORT OF TELECOMMUTING. The fifty-seventh legislative assembly enacted North Dakota Century Code section 54-06-24.1 to encourage state agencies to implement telecommuting by locating state employees away from central office settings. In furtherance of this action, it is the intent of the fifty-eighth legislative assembly that the central personnel division incorporate language within every advertisement the division publishes for a position within state government that the position may be filled through telecommuting and any offer of filling the position by telecommuting will be considered. It is also the intent of the fifty-eighth legislative assembly that the central personnel division include in every employment advertisement a web site address that has complete details on telecommuting.

¹⁶ **SECTION 28. TRANSFER OF STATE AGENCY INFORMATION TECHNOLOGY EMPLOYEE POSITIONS - CONSOLIDATION OF INFORMATION TECHNOLOGY FUNCTIONS.** On November 1, 2003, the following number of authorized full-time equivalent employee positions relating to information technology services, including electronic mail, file and print server administration, data base administration, storage, and application server and hosting services must be reduced and transferred from the named agencies to the information technology department, except as otherwise provided under this section or unless exempted by the chief information officer pursuant to section 24 of this Act:

AGENCY	FULL-TIME EQUIVALENT EMPLOYEE POSITIONS
Office of management and budget	1
Tax department	2
Department of public instruction	1
State department of health	1
Department of human services	5
Job service North Dakota	3
Industrial commission	1
Bank of North Dakota	1
Housing finance agency	1
Workers compensation bureau	2
Highway patrol	1
Department of corrections and rehabilitation	2
Game and fish department	1
State water commission	1
Department of transportation	2

After consultation with the information technology department, each affected agency shall identify the specific positions for reduction and transfer. An agency may retain any of the identified positions providing that funding for the position is available from internal savings of the agency. The agency shall conduct any reduction-in-force analysis that may be required. Each agency shall limit its consideration to information technology related positions and shall identify for reduction and transfer those positions most closely associated with services assumed centrally by the information technology department.

The agencies shall retain funding relating to the employee positions identified in this section and related costs, which is contained in the agencies' respective appropriations bill. Each of the agencies shall establish an information technology services line item consisting of funding related to the salaries and wages for the identified employee positions and related funding for equipment, training, office rent, travel, contracted services, or other related costs totaling at least \$13,000 per employee for electronic mail, file and print server administration, data base administration, storage, and application server and hosting services. Agencies shall develop documentation supporting the related funding transferred to the information technology services line item. Any line item transfer must be reported to the office of management and budget. Each of the agencies must use the funding contained in the information technology services line item to purchase information technology services from the information technology department. Each of the agencies shall make arrangements with the information technology department for the transfer of

¹⁶ Section 28 was vetoed by the Governor, see chapter 572.

equipment and material related to the transferred employee positions and services from the respective agency to the department. The information technology department is authorized to receive any funding relating to the purchase of information technology services under this section, which is hereby appropriated. Each agency is entitled to receive from the information technology department the equivalent in services that would have been performed by employees in the transferred positions at a cost not exceeding the amounts transferred to the agency's information technology services line item.

The information technology department shall determine the number of full-time equivalent positions necessary to provide the related information technology functions to state agencies. The department is authorized to employ the number of necessary employees and require all persons interested in filling the employee positions to apply with the department. In filling the employee positions, the department shall give preference to current state employees working in information technology. The department may make arrangements with the agency from which an employee was transferred to transfer any leave accrued by that employee.

In furtherance of the consolidation of information technology functions under this section, the supreme court and the attorney general shall continue to collaborate with the information technology department to implement the criminal justice information sharing program.

¹⁷ **SECTION 29. INFORMATION TECHNOLOGY FUNCTION CONSOLIDATION - ACCUMULATED SAVINGS - TRANSFER TO THE GENERAL FUND.** The information technology department shall achieve efficiencies during the biennium beginning July 1, 2003, and ending June 30, 2005, relating to the required consolidation of information technology functions, including electronic mail, file and print server administration, data base administration, storage, and application server and hosting services. The information technology department through efficiencies resulting from this consolidation shall achieve accumulated net savings totaling \$1,400,000 for the 2003-05 biennium. The director of the office of management and budget shall transfer the savings accumulated as a result of these efficiencies in the amount of \$1,400,000 to the general fund by June 30, 2005.

SECTION 30. INFORMATION TECHNOLOGY SERVICE - REPORTS TO THE INFORMATION TECHNOLOGY COMMITTEE AND THE BUDGET SECTION. The information technology department shall document information relating to the delivery of the consolidated services to agencies, including service dependability, agency complaints, and information technology department responsiveness, and shall report that information and the status of the accumulated savings to the information technology committee and the budget section as requested. Any agency receiving consolidated services may provide information to the information technology committee with respect to service availability, service dependability, complaints of the agency or of persons receiving services from the agency or the department, department responsiveness, and any additional costs incurred by the agency as a result of the consolidated services.

SECTION 31. 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 legislative council for

¹⁷ Section 29 was vetoed by the Governor, see chapter 572.

the purpose of upgrading sound systems in the house and senate chambers, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 32. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$45,000, or so much of the sum as may be necessary, to the department of agriculture for the purpose of agriculture in the classroom, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 33. 2005-07 EXECUTIVE BUDGET - STUDENT LOAN TRUST FUND. Any proposal to transfer or spend moneys from the student loan trust fund included as part of the 2005-07 biennium executive budget must be included in a separate bill introduced for consideration by the fifty-ninth legislative assembly.

SECTION 34. STATE AGENCY CONTINUING APPROPRIATIONS - REPORTS TO FIFTY-NINTH LEGISLATIVE ASSEMBLY. The head of each executive branch agency or institution shall report during the budget presentation to the appropriations committees of the fifty-ninth legislative assembly on statutory provisions authorizing the agency or institution to spend funds pursuant to a continuing appropriation. The summary report must include justification for continuing the authority, expenditures made pursuant to the continuing appropriation and related revenues and fund balances for the 1999-2001 biennium, the 2001-03 biennium, the 2003-05 biennium to date, and projections for the 2005-07 biennium.

¹⁸ **SECTION 35. CERTAIN APPROPRIATION BILLS - EXECUTIVE BUDGET RECOMMENDATION.** Notwithstanding North Dakota Century Code section 54-44.1-06, the legislative council shall submit for introduction to the fifty-ninth legislative assembly the 2005-07 appropriation bills for the department of public instruction, department of corrections and rehabilitation, state treasurer, and secretary of state based on the same funding amounts, line items, and employee levels authorized by the fifty-eighth legislative assembly for the 2003-05 biennium. Any budget changes recommended by the office of the budget for these departments for the 2005-07 biennium must be presented to the appropriations committees of the fifty-ninth legislative assembly as a recommendation for amendment to the bill as introduced.

¹⁹ **SECTION 36. STATE EMPLOYEE REDUCTIONS - BUDGET SECTION REPORT.** The number of full-time equivalent state employees must be reduced by employee retirements, employee turnover, and vacant employee positions during the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Executive branch agencies and the office of the governor, excluding other offices of state elected officials and higher education	155
State elected officials, excluding the governor	13
Judicial branch	8

One-half of this total reduction must be accomplished by December 31, 2003. The additional reductions must be accomplished by December 31, 2004. Agencies shall report employee positions eliminated and related salary and wages and fringe

¹⁸ Section 35 was vetoed by the Governor, see chapter 572.

¹⁹ Section 36 was vetoed by the Governor, see chapter 572.

benefit savings for the remainder of the 2003-05 biennium to the office of management and budget. The office of management and budget shall reduce each respective agency's appropriation authority by the amount of reported agency budgetary savings. The office of management and budget shall provide periodic reports on the employee positions eliminated by agencies and reported agency budgetary savings to the budget section of the legislative council.

²⁰ **SECTION 37. STATE EMPLOYEE REDUCTIONS - STATE EMPLOYEE COMPENSATION POOLS.** The office of management and budget shall establish a state employee compensation pool for executive branch agencies other than elected officials as provided in section 36 of this Act from agency savings resulting from employee reductions, a state employee compensation pool for state elected officials from those agency savings resulting from employee reductions, and a state employee compensation pool for the judicial branch from agency savings resulting from employee reductions.

²¹ **SECTION 38. STATE EMPLOYEE COMPENSATION POOL ALLOCATIONS - APPROPRIATION - REPORT TO THE BUDGET SECTION.** By January 1, 2004, the office of management and budget shall allocate any available funds to entities in the executive branch agency state employee compensation pool and the state elected official employee compensation pool established in section 37 of this Act for providing state employee compensation adjustments effective January 1, 2004, to be paid in February 2004. The funds must be allocated on a pro rata basis for remaining employee positions. The office of management and budget shall increase agencies' appropriation authority by the amount of funding allocated and the funds are appropriated to the agencies for the purpose of providing state employee compensation adjustments for the period January 1, 2004, through June 30, 2005. The funds in the judicial branch state employee compensation pool established in section 37 of this Act are appropriated to the judicial branch for providing state employee compensation adjustments for the period January 1, 2004, through June 30, 2005. It is the intent of the fifty-eighth legislative assembly that the compensation adjustments effective January 1, 2004, to be paid in February 2004, may not exceed increases of one percent. The office of management and budget and the judicial branch shall provide a report on the state employee compensation pool allocations to the budget section of the legislative council.

²² **SECTION 39. STATE EMPLOYEE COMPENSATION POOL ALLOCATIONS - APPROPRIATION - REPORT TO THE BUDGET SECTION.** By January 1, 2005, the office of management and budget shall allocate any available funds resulting from savings related to the employee reductions to be accomplished by December 31, 2004, to entities in the executive branch agency state employee compensation pool and the state elected official state employee compensation pool established in section 37 of this Act for providing state employee compensation adjustments effective January 1, 2005, to be paid in February 2005. The funds must be allocated on a pro rata basis for remaining employee positions. The office of management and budget shall increase agencies' appropriation authority by the amount of funding allocated and the funds are appropriated to the agencies for the purpose of providing state employee compensation adjustments for the period

²⁰ Section 37 was vetoed by the Governor, see chapter 572.

²¹ Section 38 was vetoed by the Governor, see chapter 572.

²² Section 39 was vetoed by the Governor, see chapter 572.

January 1, 2005, through June 30, 2005. The funds in the judicial branch state employee compensation pool established in section 37 of this Act are appropriated to the judicial branch for providing state employee compensation adjustments for the period January 1, 2005, through June 30, 2005. It is the intent of the fifty-eighth legislative assembly that the compensation adjustments effective January 1, 2005, to be paid February 1, 2005, may not exceed increases of two percent. The office of management and budget and the judicial branch shall provide a report on the state employee compensation pool allocations to the budget section of the legislative council.

SECTION 40. ADDITIONAL LODGING REIMBURSEMENT FOR APRIL 2003 - LEGISLATIVE ASSEMBLY. Notwithstanding the \$650 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 fifty-eighth legislative assembly is entitled to lodging reimbursement as provided in section 44-08-04 for state officers and employees for each calendar day the fifty-eighth legislative assembly is in session during the month of April 2003.

SECTION 41. LEGISLATIVE COUNCIL STUDY - PUBLIC EMPLOYEE HEALTH INSURANCE BENEFITS. The legislative council shall consider studying, during the 2003-05 interim, public employee health insurance benefits, including options for providing health insurance for state employees, the availability of other health insurance plans, single versus family coverage, employee contributions, and unitization of premium rates for budgeting purposes. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 42. SPECIFIED EXEMPT COMMODITIES AND SERVICES - REPORT TO THE BUDGET SECTION. The director of the office of management and budget shall report to the budget section in December of even-numbered years on specified commodities and services exempted by written directive of the director from the procurement requirements of chapter 54-44.4.

SECTION 43. EXEMPTION. The funds appropriated in the grants line item in section 1 of chapter 44 of the 2001 Session Laws are not subject to section 54-44.1-11 in an amount of up to \$850,000 and any unexpended funds from this amount may be spent during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 44. LEGISLATIVE INTENT - PRAIRIE PUBLIC BROADCASTING. It is the intent of the fifty-eighth legislative assembly that prairie public broadcasting funding be included in the executive budget as a separate line item in the office of management and budget's budget request for the 2005-07 biennium.

SECTION 45. Section 18 of House Bill No. 1414, as approved by the fifty-eighth legislative assembly, is created and enacted as follows:

SECTION 18. EMERGENCY. This Act is declared to be an emergency measure.

SECTION 46. Section 9 of House Bill No. 1012, as approved by the fifty-eighth legislative assembly, is created and enacted as follows:

SECTION 9. EMERGENCY. Subdivision f of subsection 1 of section 39-09-02 as amended by section 6 of this Act is declared to be an emergency measure.

SECTION 47. Section 16 of House Bill No. 1015, as approved by the fifty-eighth legislative assembly, is created and enacted as follows:

SECTION 16. EMERGENCY. Subdivision 3 of section 1 and sections 12 and 13 are declared to be an emergency measure.

SECTION 48. Section 2 of Senate Bill No. 2176, as approved by the fifty-eighth legislative assembly, is created and enacted as follows:

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

SECTION 49. TAX COMMISSIONER - TAX AMNESTY PROGRAM. The state tax commissioner shall conduct a one-time tax amnesty program for all state tax types beginning before December 31, 2003.

SECTION 50. EXPIRATION DATE. Section 18 of this Act is effective through December 31, 2004, and after that date is ineffective.

SECTION 51. EMERGENCY. Sections 18, 40, 43, 45, 46, 47, 48, and 49 of this Act are declared to be an emergency measure.

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 37

SENATE BILL NO. 2016

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

EMERGENCY MANAGEMENT

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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 division of emergency management under the supervision of the adjutant general for the purpose of defraying the expenses of the division of emergency management, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$3,037,559
Operating expenses	1,637,032
Capital assets	12,000
Grants	<u>33,899,585</u>
Total all funds	\$38,586,176
Less estimated income	<u>37,217,141</u>
Total general fund appropriation	\$1,369,035

SECTION 2. STATE HAZARDOUS MATERIAL PREPAREDNESS AND RESPONSE FUND. The sum of \$222,814, or so much of the sum as may be necessary, included in the estimated income line item in section 1 of this Act, is from the state hazardous chemicals preparedness and response fund and may be spent by the division of emergency management for the hazardous chemicals preparedness and response program, pursuant to section 37-17.1-07.1.

SECTION 3. DISASTER RELIEF FUNDING. Notwithstanding section 37-17.1-23, the division of emergency management may continue its line of credit with the Bank of North Dakota relating to the state's share of federal disaster relief funding incurred during the 2001-03 biennium to July 1, 2005. The division of emergency management may repay the line of credit to the extent possible with funding received from settlements, and the division of emergency management may request a deficiency appropriation from the 2005 legislative assembly for the remaining state's share of any federal disaster relief funding from the 2001-03 biennium.

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 38

SENATE BILL NO. 2017

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

ADJUTANT GENERAL

AN ACT to provide an appropriation for defraying the expenses of the adjutant general; and to provide an exemption to section 54-44.1-11 relating to unexpended appropriations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 adjutant general's office, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$3,568,516
Operating expenses	2,681,667
Capital assets	144,987
Grants	329,514
Civil air patrol	193,020
Tuition and enlistment compensation	1,007,500
Air guard contract	6,318,364
Army guard contract	15,370,985
Veterans' cemetery	<u>275,146</u>
Total all funds	\$29,889,699
Less estimated income	<u>20,718,716</u>
Total general fund appropriation	\$9,170,983

SECTION 2. VETERANS' CEMETERY MAINTENANCE FUND - APPROPRIATION. The veterans' cemetery line item in section 1 of this Act includes the sum of \$70,770 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, 2003, and ending June 30, 2005.

SECTION 3. LINE ITEM TRANSFER AUTHORITY - MAINTENANCE AND REPAIRS. The adjutant general may transfer to the operating expenses and capital assets line items contained in section 1 of this Act up to the sum of \$800,000 from the various other line items contained in section 1 of this Act, as determined necessary by the department to provide for the maintenance and repair of state-owned armories in this state during the biennium beginning July 1, 2003, and ending June 30, 2005. Any amounts transferred pursuant to this section must be reported to the director of the office of management and budget.

SECTION 4. EXEMPTION. The appropriation contained in section 1 of chapter 17 of the 2001 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation must be transferred to the emergency fund of the office of the adjutant general during the biennium beginning July 1, 2003, and ending June 30, 2005.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 39

SENATE BILL NO. 2018

(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. 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 state seed department for the purpose of defraying the expenses of the state seed department, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$3,405,750
Operating expenses	1,664,250
Capital assets	70,000
Grants	200,000
Contingencies	<u>300,000</u>
Total appropriation from seed department fund	<u>\$5,640,000</u>

SECTION 2. APPROPRIATION LINE ITEM TRANSFERS. Upon approval of the state seed commission, the state seed department may transfer from the contingencies line item in section 1 of this Act to all other line items, except the capital assets line item. The state seed commission shall notify the office of management and budget of each transfer made pursuant to this section.

Approved April 16, 2003
Filed April 17, 2003

CHAPTER 40

SENATE BILL NO. 2019

(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; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$15,373,582
Operating expenses	9,491,219
Capital assets	2,259,944
Grants	3,602,050
Land habitat and deer depredation	6,881,415
Noxious weed control	300,000
Grants, gifts, and donations	150,000
Nongame wildlife conservation	120,000
Lonetree reservoir	1,337,553
Wildlife services	<u>550,000</u>
Total special funds appropriation	\$40,065,763

SECTION 2. PRIVATE LAND HABITAT AND ACCESS IMPROVEMENT. The sum of \$3,873,386, or so much of the sum as may be necessary, included in the land habitat and deer depredation line item in section 1 of this Act, is from the private land habitat and access improvement fund and shall be used by the game and fish department for the private land habitat and access improvement program, as provided in section 20.1-02-05, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 3. NONGAME WILDLIFE. The sum of \$41,874, or so much of the sum as may be necessary, included in the nongame wildlife line item in section 1 of this Act, is from the nongame wildlife fund and shall be used by the game and fish department for the purposes provided in section 20.1-02-16.2, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 4. WILDLIFE SERVICES - AGRICULTURE COMMISSIONER. The sum of \$550,000, or so much of the sum as may be necessary, included in the wildlife services line item in section 1 of this Act, is from the game and fish department operating fund and must be provided to the agriculture commissioner to pay for services provided by the United States department of agriculture wildlife services agency to alleviate wildlife depredation and damage in North Dakota. Projects, contracts, and agreements relating to the expenditure of these moneys must be approved by the director of the game and fish department.

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

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 41

SENATE BILL NO. 2020

(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; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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 the state historical society, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$5,078,190
Operating expenses	1,270,004
Capital assets	849,544
Grants	1,300,000
Veterans' oral history project	150,000
Cultural heritage grants	75,000
Yellowstone-Missouri-Fort Union Commission	4,492
Lewis and Clark bicentennial	<u>923,746</u>
Total all funds	\$9,650,976
Less estimated income	<u>2,391,042</u>
Total general fund appropriation	\$7,259,934

SECTION 2. 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, 2003, and ending June 30, 2005.

SECTION 3. 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, 2003, and ending June 30, 2005.

SECTION 4. COMPACT STORAGE UNITS. The state historical society may spend moneys appropriated in the capital assets line item in section 1 of this Act to purchase compact storage units, for the period beginning with the effective date of this Act and ending June 30, 2005.

SECTION 5. EXEMPTION. The state historical society's appropriation contained in section 1 of chapter 20 of the 2001 Session Laws is not subject to the provisions of section 54-44.1-11 in an amount of up to \$540,000, of which \$440,000 is from the general fund and \$100,000 is from special funds. Of the \$540,000,

\$25,000 is for cultural heritage grants and \$515,000 is for the completion of the confluence center exhibits and the era of change exhibits.

SECTION 6. LEWIS AND CLARK BICENTENNIAL LINE ITEM AND CAPITAL ASSETS LINE ITEM TRANSFERS. Notwithstanding any other provision of law, the state historical society may transfer funds between the Lewis and Clark bicentennial line item and the capital assets line item during the period beginning July 1, 2003, and ending June 30, 2005.

SECTION 7. EMERGENCY. The capital assets line item, \$300,000 of the grants line item relating to the federal historic preservation program, and the veterans' oral history project line item in section 1 and section 4 of this Act are declared to be an emergency measure.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 42

SENATE BILL NO. 2021

(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 amend and reenact section 55-08-06 of the North Dakota Century Code, relating to park permit fees; to repeal section 55-08-14 of the North Dakota Century Code, relating to capital projects and revenue bonds authorization; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much 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, 2003, and ending June 30, 2005, as follows:

Subdivision 1.

PARKS AND RECREATION DEPARTMENT

Salaries and wages	\$5,254,566
Operating expenses	4,601,793
Capital assets	2,517,794
Grants	4,336,000
Lewis and Clark bicentennial	760,618
Total all funds	\$17,470,771
Less estimated income	<u>10,767,112</u>
Total general fund appropriation	<u>\$6,703,659</u>

Subdivision 2.

INTERNATIONAL PEACE GARDEN

International Peace Garden	<u>\$352,854</u>
Total general fund appropriation	\$352,854
Grand total general fund appropriation S.B. 2021	\$7,056,513
Grand total special funds appropriation S.B. 2021	\$10,767,112
Grand total all funds appropriation S.B. 2021	\$17,823,625

SECTION 2. APPROPRIATION. There is appropriated from special funds derived from federal funds and other income the sum of \$500,000, or so much of the sum as may be necessary, to the parks and recreation department for the purpose of providing grants for the period beginning with the effective date of this Act and ending June 30, 2003.

SECTION 3. AMENDMENT. Section 55-08-06 of the North Dakota Century Code is amended and reenacted as follows:

55-08-06. Permits for motor vehicles. Unless authorized by the director, a motor vehicle may not enter or be permitted to enter any state park, state recreational area, or reserve unless the operator of the motor vehicle displays upon request a permit issued as provided in this chapter. Permits must be of a size, form, and character as the director prescribes, and the director shall procure permits for each calendar year which by appropriate language must grant permission to use any state park, state recreational area, or reserve. Permits for each calendar year must be provided and placed on sale on or before November first next preceding and used on or at any time after that date until May first of the year following the calendar year for which issued. Permits in each category must be numbered consecutively for each year of issue. Except for senior citizen discounts, a fee of twenty-five dollars must be charged for each permit issued, except that permits of appropriate special design may be sold individually at a maximum of ~~four~~ five dollars per permit covering the use of state parks, state recreational areas, or reserves under such conditions as the director may prescribe for a designated period of not more than three days. The director may authorize a discount on the sale of annual permits to any resident of North Dakota who is sixty-five years of age or older and who applies for a discount. The fees collected must be deposited in the state park operating fund in the state treasury, unless authorized by the director as follows:

1. The director may allow other agencies or organizations that have leased state parks, state recreational areas, reserves, or facilities to retain entrance and special permit fees collected by the lessee.
2. The director may exempt all or any part of any state park, state recreational area, or reserve from the requirement of the motor vehicle permit and fee, for any activity or period, when in the director's judgment it is desirable to do so; provided, however, that no further exceptions may be made after state park revenue bonds are issued and while the bonds are outstanding.

SECTION 4. SNOWMOBILE FUND. The sum of \$902,888, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is from the snowmobile fund and must be used by the parks and recreation department pursuant to section 39-24-05, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 5. TRAIL TAX TRANSFER FUND. The sum of \$50,000, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is from the trail tax transfer fund and must be used by the parks and recreation department pursuant to section 39-29-05, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 6. STATE PARKS GIFT FUND. The sum of \$100,456, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is from the state parks gift fund and must be used by the parks and recreation department pursuant to section 55-08-07.2, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 7. GAME AND FISH OPERATING FUND. The sum of \$122,000, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 1 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, 2003, and ending June 30, 2005.

SECTION 8. WATER DEVELOPMENT TRUST FUND. Notwithstanding section 54-27-25, the sum of \$575,287, or so much of the sum as may be necessary, included in the estimated income line item in subdivision 1 of section 1 of this Act, is from the water development trust fund and may be spent by the parks and recreation department for the purpose of repaying principal and interest on disaster response loans from the Bank of North Dakota, pursuant to section 54-16-13.

SECTION 9. REPEAL. Section 55-08-14 of the North Dakota Century Code is repealed.

SECTION 10. EMERGENCY. The capital assets line item in subdivision 1 of section 1 of this Act and sections 2 and 3 of this Act are declared to be an emergency measure.

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 43

SENATE BILL NO. 2022

(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 provide a line of credit and an appropriation for repayment; to authorize the state water commission to issue and sell evidences of indebtedness for the construction of water-related projects; to create and enact a new section to chapter 61-02 of the North Dakota Century Code, relating to construction of the Devils Lake outlet; to amend and reenact sections 54-27-25 and 61-02.1-02.1 of the North Dakota Century Code, relating to allocation of the tobacco settlement trust fund and funding statewide water development projects; to transfer funds from the water development trust fund to the general fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 water development trust 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 the state water commission, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Administrative and support services	\$2,076,235
Water and atmospheric resources	<u>157,782,619</u>
Total all funds	<u>\$159,858,854</u>
Less estimated income	<u>150,473,458</u>
Total general fund appropriation	<u>\$9,385,396</u>

SECTION 2. RESOURCES TRUST FUND. The sum of \$13,650,000, or so much of the sum as may be necessary, included in the total special funds appropriation line item in section 1 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, 2003, and ending June 30, 2005.

SECTION 3. WATER DEVELOPMENT TRUST FUND. The sum of \$32,946,225, or so much of the sum as may be necessary, included in the total special funds appropriation line item in section 1 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, 2003, and ending June 30, 2005.

SECTION 4. 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 1 of this Act. However, this exclusion is only in effect for two years after

June 30, 2005. 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 5. SALE AND PURCHASE OF LAND AND BUILDING - AUTHORITY - CONTINUING APPROPRIATION.

1. The state water commission, on behalf of the state of North Dakota, may sell in one or more parcels the land and building known as the "state water commission maintenance shop" located at 2603 East Broadway Avenue, Bismarck, North Dakota, and legally described as follows:

A tract of land lying in the Northwest Quarter (NW 1/4) of Section Two (2), Township One Hundred Thirty-Eight (138) North, Range Eighty (80) West of the Fifth (5) Principal Meridian, in the County of Burleigh and State of North Dakota, and described as follows:

Commencing at the northwest corner of said section two; thence traveling in a southerly direction along the west boundary of said section two for a distance of seven hundred seventy-four and six-tenths feet (744.60); thence turning a right angle to the left in an easterly direction along a line which is parallel to the north boundary of said section two for a distance of forty-seven feet (47.00), which shall be called the true point of beginning; thence continuing due east along said line for a distance of eight hundred forty-two and nine-tenths feet (842.90); thence turning a deflection angle of ninety degrees and twenty-two minutes (90 degrees 22') to the right and traveling in a southerly direction to a point of intersection with the north fifty foot railroad right-of-way line; thence traveling in a westerly direction along said north fifty foot railroad right-of-way line to a point of intersection with the west boundary of said section two; thence traveling in a northerly direction along the west boundary of said section two for a distance of four hundred seventy-two and one-tenth feet (472.10); thence turning a right angle to the right in an easterly direction along a line which is parallel to the north boundary of said section two for a distance of forty-seven feet (47.00); thence traveling in a northerly direction along a line which is parallel to the west boundary of said section two for a distance of one hundred fifty feet (150.00) to the point of beginning. Including all of the property bounded by the above described line, subject to existing rights-of-way and easements.

The above described tract of land contains 11.77 acres, more or less.

2. The conveyance authorized by this Act is exempt from sections 54-01-05.2 and 54-01-05.5. The conveyance may only be made after the property has been appraised and the property must be sold at public auction unless no bid equals or exceeds the minimum appraised value. The appraisal must be dated no earlier than eighteen months before the auction. If at the public auction no bid equals or exceeds the minimum appraised value, the state water commission may negotiate a price for the land with a purchaser.
3. All proceeds from the sale, or so much of the sale proceeds as may be necessary, not otherwise appropriated, are appropriated on a continuing

basis to the state water commission for the purchase or lease of land and the construction of a building and associated appurtenances to be used as a new maintenance facility on new or the existing water commission property. The purchase authorized by this subsection may proceed only after completion of a certified appraisal of the property to be purchased and completion of a physical inspection of any building to be purchased demonstrating that the building is structurally sound and suitable for state water commission purposes.

4. The attorney general shall review and approve the form and legality of all legal documents required for the conveyance and purchase authorized by this Act, including title opinions.

SECTION 6. BUILDING SALE PROCEEDS. Proceeds of the sale of the state water commission maintenance shop located in east Bismarck, as provided in section 5 of this Act, must be used to purchase or lease land and construct a new maintenance shop building on new or the existing water commission property. If the proceeds from the sale are less than \$977,100, the state water commission may use other funds appropriated to the state water commission for the purpose of purchasing or leasing land and constructing a new maintenance shop building on new or the existing water commission property. If the proceeds from the sale are not available at the time the state water commission needs to purchase or lease land and construct the new building and associated appurtenances on new or the existing water commission property, the state water commission may use other funds appropriated to it provided that, upon receipt of the proceeds of the sale, the state water commission transfers to the funds from which moneys were taken an amount equal to any funds utilized for the purchase or lease of land and construction of the new maintenance building on new or the existing water commission property. If the state water commission uses other funds appropriated to it because the funds from the sale of the land and building are insufficient, the state water commission need not make a transfer of sale proceeds. No more than a total of \$977,100 may be expended from the amounts appropriated under this Act to purchase land and construct the new maintenance building and associated appurtenances on new or the existing water commission property.

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 purpose of interim financing until bonds are issued under chapters 61-02 and 61-02.1, for the biennium beginning July 1, 2003, and ending June 30, 2005.

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, not otherwise appropriated, or from bond proceeds, 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, 2003, and ending June 30, 2005.

SECTION 9. BOND ISSUANCE AUTHORIZATION - PURPOSES. Notwithstanding the authority of the state water commission to issue evidences of indebtedness under chapters 61-24.3 and 61-24.6, the state water commission may arrange for the funding of water-related projects or works in this state, including those identified in the statewide water development plan, which are authorized and declared to be in the public interest, through the issuance of evidences of

indebtedness under chapters 61-02 and 61-02.1 in an amount not to exceed \$60,000,000, plus the costs of issuance, capitalized interest, and required reserves, for the biennium beginning July 1, 2003, and ending June 30, 2005. Bonds issued pursuant to this section are not a general obligation of the state of North Dakota.

SECTION 10. RESOURCES TRUST FUND APPROPRIATION - ADJUSTMENT. If the resources trust fund 2003-05 revenues are in excess of \$13,650,000, any excess is appropriated, subject to emergency commission approval, from the resources trust fund to the state water commission for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 11. AMENDMENT. Section 54-27-25 of the North Dakota Century Code is amended and reenacted as follows:

54-27-25. Tobacco settlement trust fund - Interest on fund - Uses. There is created in the state treasury a tobacco settlement trust fund. The fund consists of the tobacco settlement dollars obtained by the state under sections IX (payments) and XI (calculation and disbursement of payments) of the master settlement agreement and consent agreement adopted by the east central judicial district court in its judgment entered December 28, 1998 [Civil No. 98-3778]. All moneys received by the state pursuant to the judgment and all moneys received by the state for enforcement of the judgment must be deposited in the fund. Interest earned on the fund must be credited to the fund and deposited in the fund. The principal and interest of the fund must be allocated as follows:

1. Transfers to a community health trust fund to be administered by the state department of health. The state department of health may use funds as appropriated for community-based public health programs and other public health programs, including programs with emphasis on preventing or reducing tobacco usage in this state. Transfers under this subsection must equal ten percent of total annual transfers from the tobacco settlement trust fund.
2. Transfers to the common schools trust fund to become a part of the principal of that fund. Transfers under this subsection must equal forty-five percent of total annual transfers from the tobacco settlement trust fund.
3. Transfers to the water development trust fund to be used to address the long-term water development and management needs of the state. Transfers under this subsection must equal forty-five percent of the total annual transfers from the tobacco settlement trust fund.

~~Notwithstanding the provisions of this section, during each biennium transfers that would be made to the common schools trust fund under subsection 2 must instead be transferred to the water development trust fund until the state water commission certifies to the state treasurer that deposits in the water development trust fund during that biennium are sufficient to pay the principal and interest for that biennium on bonds authorized under section 61-02.1-01. When that certification is received, the state treasurer shall determine the amount deposited in the water development trust fund during that biennium and transfers that would be made to the water development trust fund under subsection 3 must instead be transferred to the common schools trust fund until deposits in the common schools trust fund during that biennium are equal to the amount deposited in the water development trust fund during that biennium or until the end of the biennium, whichever occurs first.~~

Transfers to the funds under this section must be made within thirty days of receipt by the tobacco settlement trust fund.

SECTION 12. A new section to chapter 61-02 of the North Dakota Century Code is created and enacted as follows:

Construction of the Devils Lake outlet - Authorization - Agreement. The state water commission may do all things reasonably necessary to construct an outlet from Devils Lake, including executing an agreement with the federal government wherein the state water commission agrees to hold the United States harmless and free from damages, except for damages due to the fault or negligence of the United States or its contractors.

SECTION 13. AMENDMENT. Section 61-02.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02.1-02.1. Funding - Statewide water development projects - Bond issuance amount.

1. The priorities for the statewide water development program for the 2001-03 biennium include municipal, rural, and industrial projects; irrigation projects; general water management projects, including rural flood control, snagging and clearing, channel improvement, recreation, and planning studies; flood control projects; and weather modification projects. The state water commission may provide the funds necessary to construct these projects from money appropriated to the state water commission from the resources trust fund, the water development trust fund, or by issuing bonds in an amount not to exceed twenty million dollars plus the costs of issuance of the bonds, capitalized interest, and reasonably required reserves. ~~The commission may utilize up to five million five hundred thousand dollars from the water development trust fund, the resources trust fund, or from bond proceeds to provide cost share for a flood control channel and levy project designed to provide protection from overland flooding to a city with a population in excess of eighty thousand as of the 2000 federal decennial census. The amount provided may not exceed fifty percent of the city's share of the cost to construct the project. Bonds may be issued utilizing the procedures set forth in chapter 64-02.~~ 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 section.
2. If the state water commission determines it is appropriate to do so, it may, in lieu of issuing or in combination with the issuance of bonds pursuant to sections 61-02.1-01 and 61-02.1-02, for all or part of the state's cost share for the projects set forth in those provisions, use funds appropriated to it from the resources trust fund or the water development trust fund. ~~Regardless of the source, the amount of funds used may not exceed the limits set forth in section 61-02.1-02.~~

SECTION 14. CONTINUING APPROPRIATION - DEVILS LAKE OUTLET.

There is appropriated to the state water commission on a continuing basis from the water development trust fund or the resources trust fund in the state treasury, or from bond proceeds from bonds issued by the state water commission, as determined by the state water commission, the amount of funds required by the agreement between the state and the federal government to construct an outlet from Devils Lake to meet

its cost-share obligations under the agreement and from any legally available funds to meet its indemnification obligations under the agreement.

SECTION 15. TRANSFER. Notwithstanding section 54-27-25, during the biennium beginning July 1, 2003, and ending June 30, 2005, the director of the office of management and budget shall transfer \$10,070,373 from the water development trust fund to the general fund.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 44**SENATE BILL NO. 2023**

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

WORKERS COMPENSATION BUREAU

AN ACT to provide an appropriation for defraying the expenses of the workers compensation bureau.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 workers' compensation fund in the state treasury, not otherwise appropriated, to the workers compensation bureau for the purpose of defraying the expenses of the workers compensation bureau for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Total special funds appropriation	\$32,397,631
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Approved May 2, 2003
Filed May 2, 2003

CHAPTER 45

SENATE BILL NO. 2024

(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.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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, 2003, and ending June 30, 2005, as follows:

Subdivision 1.

RETIREMENT AND INVESTMENT OFFICE

Salaries and wages	\$1,774,885
Operating expenses	986,444
Contingencies	82,000
Contracted services	<u>2,000,000</u>
Total special funds appropriation	<u>\$4,843,329</u>

Subdivision 2.

PUBLIC EMPLOYEES RETIREMENT SYSTEM

Salaries and wages	\$2,653,654
Operating expenses	1,484,504
Contingencies	<u>250,000</u>
Total special funds appropriation	<u>\$4,388,158</u>
Grand total special funds appropriation S.B. 2024	<u>\$9,231,487</u>

SECTION 2. 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 1 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.

Approved April 16, 2003

Filed April 17, 2003

CHAPTER 46**SENATE BILL NO. 2025**

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

ECONOMIC ASSISTANCE APPROPRIATION

AN ACT to provide an appropriation for defraying certain medical assistance expenses of the department of human services; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of special funds in the state treasury, not otherwise appropriated, to the department of human services for the purpose of defraying the expenses of that agency, for the period beginning January 1, 2003, and ending June 30, 2003, as follows:

ECONOMIC ASSISTANCE

Grants - Medical assistance	<u>\$15,450,000</u>
Total special funds appropriation	<u>\$15,450,000</u>

SECTION 2. SPECIAL FUNDS - HEALTH CARE TRUST FUND - PERMANENT OIL TAX TRUST FUND. The total special funds appropriation line item in section 1 of this Act includes \$7,506,238 from the health care trust fund and \$7,943,762 from the permanent oil tax trust fund.

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

Approved April 18, 2003
 Filed April 18, 2003

CHAPTER 47**SENATE BILL NO. 2032**

(Legislative Council)
(Education Committee)

DATA ENVELOPMENT ANALYSIS PROJECT

AN ACT to provide an appropriation for the data envelopment analysis project.

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 \$50,000, or so much of the sum as may be necessary, to the superintendent of public instruction for the purpose of completing the data envelopment analysis project, for the biennium beginning July 1, 2003, and ending June 30, 2005.

Approved April 9, 2003

Filed April 9, 2003

GENERAL PROVISIONS

CHAPTER 48

SENATE BILL NO. 2046

(Legislative Council)
(Judiciary A Committee)

TECHNICAL CORRECTIONS ACT

AN ACT to amend and reenact sections 4-30-48 and 6-03-13.6, subdivision b of subsection 3 of section 10-06.1-17, subsection 2 of section 10-19.1-146, subsection 21 of section 11-11-14, sections 11-28.2-01 and 12.1-12-02, subsection 5 of section 14-09-08.4, sections 14-09-08.13 and 14-09-08.14, subdivision e of subsection 5 of section 19-03.1-36, sections 20.1-02-05.1, 20.1-04-12.1, 20.1-08-04.6, 20.1-13-08, 20.1-13.1-09, 20.1-15-09, and 20.1-15-10, subsection 7 of section 21-03-07, section 23-02.1-16, subsection 6 of section 26.1-05-19, subsection 9 of section 26.1-06.1-02, subsection 4 of section 26.1-17-01, sections 26.1-26-31.8 and 26.1-36.5-01, subdivision e of subsection 4 of section 26.1-38.1-01, subsection 1 of section 29-06-15, subsection 9 of section 32-03.2-11, section 38-08-09.9, subsection 7 of section 40-63-07, subdivision e of subsection 1 of section 41-09-02, subsection 4 of section 43-17-07.1, subsection 2 of section 44-04-18, section 49-01-02, subsection 5 of section 54-52.1-01, and subsection 2 of section 57-02-26 of the North Dakota Century Code, relating to technical corrections and improper, inaccurate, redundant, missing, or obsolete references.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-30-48 of the North Dakota Century Code is amended and reenacted as follows:

4-30-48. Failure to agree on sample for official test - Procedure to be followed. Whenever it is impossible to secure or mutually agree upon a sample of milk as provided in section 4-30-47, then the party selling or offering for sale such milk may require that the buyer or prospective buyer forward to the department the sample taken in compliance with ~~sections 4-30-19 and section 4-30-20~~. Each sample so forwarded must be accompanied by a statement in the form of an affidavit from the buyer or prospective buyer, stating that the sample was taken in compliance with the provisions of ~~sections 4-30-19 and section 4-30-20~~, and the statement also must contain all information required in section 4-30-47, except that the signature of the seller is not required thereon. Each sample must be tested and reported on as prescribed in section 4-30-47, and the percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made.

²³ **SECTION 2. AMENDMENT.** Section 6-03-13.6 of the North Dakota Century Code is amended and reenacted as follows:

6-03-13.6. Branch conversions. Notwithstanding section 6-03-13.1, any bank organized under chapter 6-02, any national bank doing business in this state, or a bank established in this state by a bank holding company doing business in this state as of January 1, 1995, may convert a branch of a federal savings and loan association located in this state which was in existence as of March 1, 1995, purchased by the bank between January 1, 1995, and August 1, 1996, into a facility of the bank to be maintained at the same branch location if the acquisition and conversion does not violate the deposit limitations provisions contained in sections ~~6-08-29~~ 6-08-30 and 6-08.3-03.1 and the acquisition and conversion of the branch is approved by the appropriate regulatory agencies.

SECTION 3. AMENDMENT. Subdivision b of subsection 3 of section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

- b. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and ~~services~~ series, if any, within a class.

²⁴ **SECTION 4. AMENDMENT.** Subsection 2 of section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

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 subdivisions g, i, and j h 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 prescribed in subsection 39 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 subdivisions g, i, and j h of subsection 1 to any person, except a person who 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.

²³ Section 6-03-13.6 was also amended by section 1 of House Bill No. 1355, chapter 71.

²⁴ Section 10-19.1-146 was also amended by section 21 of House Bill No. 1362, chapter 85.

SECTION 5. AMENDMENT. Subsection 21 of section 11-11-14 of the North Dakota Century Code is amended and reenacted as follows:

21. To participate and enact or adopt ordinances and resolutions necessary for participation in the nation's historic preservation program as a certified local government, as provided for under 36 CFR ~~64.5~~ 61.6.

SECTION 6. AMENDMENT. Section 11-28.2-01 of the North Dakota Century Code is amended and reenacted as follows:

11-28.2-01. Establishment of recreation service districts - Petition - Purpose. The board of county commissioners of any county in this state, at any meeting of such board, by majority vote of all of the members may, upon the petition of ten percent of the persons who qualify pursuant to section 11-28.2-03 as voters of an area to be included within a proposed recreation service district, call for an election of all of the qualified voters of such district to determine the question of the establishment of a recreation service district for the purpose of providing police protection, sewer and water, garbage removal services, and public road construction and maintenance, in addition to that provided by the local governing body or agency to summer homes, cottages, and other residences and establishments as may exist within such area, and provide for the improvement and control of the environmental quality of the recreation service district. Said recreation service district shall be limited in size and location to an area which is contiguous to or within one-quarter mile [402.34 meters] of the recreational waters of the area or to the areas of land which are dedicated to public use for recreational purposes. In addition, said district shall consist of not less than fifty privately owned seasonal homes or cottages and other residences and establishments. If a petition is presented to the board of county commissioners calling for such election, such petition shall be accompanied by such information as the board of county commissioners shall require, including the boundaries of the proposed recreation district, the approximate number of qualified voters as defined in section 11-28.2-03, and a sufficient deposit of money to cover all costs of such election. Within sixty days after the calling of such an election, the board of county commissioners shall provide an election on the question of whether or not a recreation service district should be established and shall establish procedures for voting and other necessary matters not inconsistent with the provisions of this chapter. The county commissioners shall give at least thirty days' notice of the election by certified mail to all qualified voters as defined in section 11-28.2-03. If a majority of the qualified ~~voters~~ electors voting on the question approve of the establishment of a recreation service district, such district shall then be organized.

The board of commissioners of a recreation service district may extend the boundaries of the district to property within or contiguous to the one-quarter mile [402.34 meters] limit through the annexation procedures provided in sections 11-28.2-06 through 11-28.2-08.

SECTION 7. AMENDMENT. Section 12.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-12-02. Illegal influence between legislators or between legislators and governor. Any person who violates the provisions of section 9 of article IV or section 44 10 of article V of the Constitution of North Dakota is guilty of a class C felony.

SECTION 8. AMENDMENT. Subsection 5 of section 14-09-08.4 of the North Dakota Century Code is amended and reenacted as follows:

5. A determination that a child who is the subject of a child support order is eligible for benefits furnished under subsection ~~17~~ 19 of section 50-06-05.1, chapter 50-09, or chapter 50-24.1, or any substantially similar program operated by any state or tribal government, constitutes a material change of circumstances. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances. The need to provide for a child's health care needs, through health insurance or other means, constitutes a material change of circumstances.

SECTION 9. AMENDMENT. Section 14-09-08.13 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.13. Application for service. The child support agency responsible for support enforcement shall take necessary steps to implement, modify, and enforce an order for dependent health insurance whenever the children receive benefits through a ~~demonstration project established under section 50-06-01.8,~~ temporary assistance for needy families or foster care under chapter 50-09 or medical assistance under chapter 50-24.1, or upon application of the obligee to the child support agency and payment by the obligee of any required application fee.

SECTION 10. AMENDMENT. Section 14-09-08.14 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.14. Public authority to establish criteria. The public authority shall establish criteria to identify cases involving children who received benefits through a ~~demonstration project established under section 50-06-01.8,~~ temporary assistance for needy families or foster care under chapter 50-09 or medical assistance under chapter 50-24.1, or ~~where~~ when an application to the child support agency has been completed by an obligee and ~~where~~ when there is a high potential for obtaining medical support based on:

1. Evidence that health insurance may be available to the obligor at reasonable cost; and
2. Facts that are sufficient to warrant modification of the existing court order to include health insurance coverage for a dependent child.

²⁵ **SECTION 11. AMENDMENT.** Subdivision e of subsection 5 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- e. Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection ~~3~~ 6 of

²⁵ Section 19-03.1-36 was also amended by section 2 of House Bill No. 1111, chapter 184, and section 3 of House Bill No. 1111, chapter 184.

section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.

SECTION 12. AMENDMENT. Section 20.1-02-05.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-05.1. Land acquisitions - Statewide land acquisition plan. The ~~commissioner~~ director shall establish a comprehensive statewide land acquisition plan that must be approved by the budget section of the legislative council. Every land acquisition made by the department exceeding ten acres [4.05 hectares] or ten thousand dollars must be approved by the budget section.

SECTION 13. AMENDMENT. Section 20.1-04-12.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-04-12.1. Gun dog activities - Permit required - Fee.

1. The ~~commissioner~~ director shall issue a permit for the following gun dog activities:
 - a. The training exercises of a resident or nonresident professional trainer;
 - b. The training exercises of a nonresident amateur trainer who brings more than four gun dogs into the state; and
 - c. Hosting field trials that use live wild birds.
2. The application for the permit must be in a form prescribed by the ~~commissioner~~ director and must be accompanied by the appropriate fee.
3. Upon the receipt of the completed application and fee the ~~commissioner~~ director shall issue a permit for a specified period of time and shall require the permitholder to submit an annual report.
4. The fees for the permits are:
 - a. For a resident professional gun dog trainer for training exercises or hosting field trials, ten dollars.
 - b. For a nonresident professional gun dog trainer for training exercises or hosting field trials, one hundred dollars.
 - c. For a permit to a nonresident amateur who brings more than four gun dogs into this state, twenty-five dollars.
5. For purposes of this section, a professional trainer is a person who trains any breed of gun dog for remuneration that is the basis for that person's livelihood.

²⁶ **SECTION 14. AMENDMENT.** Section 20.1-08-04.6 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.6. Governor's proclamation concerning the hunting of elk - Rocky mountain elk foundation raffle. The governor may by proclamation provide for a season to hunt elk in a manner, number, places, and times as the governor prescribes. Licenses to hunt elk must be issued by lottery, except as provided under subsection 7 of section 20.1-03-11, with only residents eligible to apply; however, the governor may by proclamation make available to the rocky mountain elk foundation a license to hunt elk in a manner, places, and times as the governor prescribes. The rocky mountain elk foundation shall hold a raffle under rules adopted by the ~~commissioner~~ director with only residents eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle and all net proceeds must be used for elk management and related projects in North Dakota as described under rocky mountain elk foundation policies and objectives. The rocky mountain elk foundation shall submit reports concerning the raffle as the ~~commissioner~~ director requires. Except for landowners who receive special elk depredation management licenses issued to landowners under subsection 7 of section 20.1-03-11 and persons who receive a special elk depredation management license issued by lottery under this section, a person may only receive one license to hunt elk issued by lottery and one nontransferable license to hunt elk through the rocky mountain elk foundation raffle in a lifetime.

SECTION 15. AMENDMENT. Section 20.1-13-08 of the North Dakota Century Code is amended and reenacted as follows:

20.1-13-08. Collisions, accidents, casualties, and liability. The operator of a vessel involved in a collision, accident, or other casualty, so far as that person can do so without serious danger to that person's own vessel, crew, and passengers, shall render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and necessary to save them from or minimize any danger caused by the collision, accident, or other casualty. That person shall also give that person's name, address, and vessel identification in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty. If a collision, accident, or other casualty involving a vessel results in death or injury to a person or damage to property in excess of an amount specified by the ~~commissioner~~ director by rule, or a person disappears from the vessel under circumstances that indicate death or injury, the operator of the vessel shall file with the department a full description of the collision, accident, or other casualty, including such information as the ~~commissioner~~ director may require by rule.

Any operator of a vessel, or other person who complies with this section or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty without objection of any person assisted may not be held liable for any civil damages as a result of the rendering of assistance or for any act or omission in providing or arranging salvage, towage, medical treatment, or other assistance where the assisting person acts as an ordinary, reasonably prudent person would have acted under the same or similar circumstances.

²⁶ Section 20.1-08-04.6 was also amended by section 3 of Senate Bill No. 2215, chapter 204.

SECTION 16. AMENDMENT. Section 20.1-13.1-09 of the North Dakota Century Code is amended and reenacted as follows:

20.1-13.1-09. Judicial review. Any person who has been prohibited from operating a motorboat or vessel by the decision of the hearing officer under section 20.1-13.1-08 may appeal within seven days after the date of the hearing under section 20.1-13.1-08 as shown by the date of the hearing officer's decision, notwithstanding section 28-32-42, by serving on the ~~commissioner~~ director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a chemical test was made or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the ~~commissioner~~ director and to the hearing officer who rendered the decision. Neither the ~~commissioner~~ director nor the court may stay the decision pending decision on appeal. Within fifteen days after receipt of the notice of appeal, the ~~commissioner~~ director or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. This record is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the ~~commissioner~~ director or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the ~~commissioner~~ director or hearing officer. The court may direct that the matter be returned to the ~~commissioner~~ director or hearing officer for rehearing and the presentation of additional evidence.

SECTION 17. AMENDMENT. Section 20.1-15-09 of the North Dakota Century Code is amended and reenacted as follows:

20.1-15-09. Judicial review. Any person whose hunting privileges have been suspended, revoked, or denied by the decision of the hearing officer under section 20.1-15-08 may appeal within seven days after the date of the hearing under section 20.1-15-08 as shown by the date of the hearing officer's decision, notwithstanding section 28-32-42, by serving on the ~~commissioner~~ director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a chemical test was made or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the ~~commissioner~~ director and to the hearing officer who rendered the decision. Neither the ~~commissioner~~ director nor the court may stay the decision pending decision on appeal. Within fifteen days after receipt of the notice of appeal, the ~~commissioner~~ director or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. This record is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the ~~commissioner~~ director or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the ~~commissioner~~ director or hearing officer. The court may direct that the matter be returned to the ~~commissioner~~ director or hearing officer for rehearing and the presentation of additional evidence.

SECTION 18. AMENDMENT. Section 20.1-15-10 of the North Dakota Century Code is amended and reenacted as follows:

20.1-15-10. Credit for suspension of hunting privileges. After conviction of a person for violating section 20.1-01-06, the ~~commissioner~~ director, in suspending the person's hunting privileges, shall give credit for the time in which the suspension or revocation of hunting privileges has been or is being imposed under this chapter in connection with the same offense.

SECTION 19. AMENDMENT. Subsection 7 of section 21-03-07 of the North Dakota Century Code is amended and reenacted as follows:

7. The governing body of any public school district may also by resolution adopted by a two-thirds vote dedicate the tax levies as authorized by section 15.1-09-47, 15.1-09-49, or 57-15-16 and may authorize and issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings or for the construction or improvement of a project ~~pursuant to chapter 15-60~~ under section 15.1-36-02 or 15.1-36-03. The initial resolution authorizing the tax levy dedication and general obligation bonds must be published in the official newspaper of the school district, and any owner of taxable property within the school district may, within sixty days after publication, file with the business manager of the school district a protest against the adoption of the resolution. Protests must be in writing and must describe the property that is the subject of the protest. If the governing body finds the protests to have been signed by the owners of taxable property having an assessed valuation equal to five percent or more of the assessed valuation of all taxable property within the school district, as theretofore last finally equalized, all further proceedings under the initial resolution are barred.

SECTION 20. 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 ~~23-02.1-15~~ 23-02.1-19, a certificate may be filed in accordance with regulations of the state department of health.

1. Such certificates must be registered subject to such evidentiary requirements as the state department of health shall by regulation prescribe to substantiate the alleged facts of death.
2. Certificates 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 21. AMENDMENT. Subsection 6 of section 26.1-05-19 of the North Dakota Century Code is amended and reenacted as follows:

6. Bonds guaranteed under former chapter 6-09.2.

SECTION 22. AMENDMENT. Subsection 9 of section 26.1-06.1-02 of the North Dakota Century Code is amended and reenacted as follows:

9. All health maintenance organizations subject to chapter ~~26.1-18~~ 26.1-18.1.

SECTION 23. AMENDMENT. Subsection 4 of section 26.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Health service corporation" means a nonprofit corporation organized for the purposes of establishing a health service plan whereby one or more kinds of health service is provided to subscribers under a prepaid

health service contract entitling each subscriber to certain specified health services, but does not include a health maintenance organization organized under chapter ~~26.1-18~~ 26.1-18.1.

SECTION 24. AMENDMENT. Section 26.1-26-31.8 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26-31.8. License revocation.

1. The commissioner shall suspend the license of any person if, after holding a hearing, the commissioner finds that the person failed to meet the requirements imposed by subdivision c of subsection 1 of section 26.1-26-13.3 and sections 26.1-26-31.1 through 26.1-26-31.8. Any license suspended under this subsection must remain suspended until the person has demonstrated, to the satisfaction of the commissioner, compliance with the requirements of section ~~26.1-26-15.1~~ 26.1-26-13.3 and sections 26.1-26-31.1 through 26.1-26-31.8 and other applicable laws.
2. The commissioner, after holding a hearing, shall suspend the license of any person who has submitted a false or fraudulent certificate of compliance.

SECTION 25. AMENDMENT. Section 26.1-36.5-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.5-01. Definition. For purposes of this chapter, unless the context otherwise requires, "insurer" means any health insurer, including a group health plan, 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)], a health maintenance organization as defined in section ~~26.1-18-04~~ 26.1-18.1-01, a health service corporation as defined in section 26.1-17-01, and a provider of an accident and health insurance policy as defined in section 26.1-36-03.

SECTION 26. AMENDMENT. Subdivision e of subsection 4 of section 26.1-38.1-01 of the North Dakota Century Code is amended and reenacted as follows:

- e. With respect to one contract owner provided coverage under subparagraph ~~d~~ c of paragraph 2 of subdivision b of subsection 1; or one plan sponsor whose plans own directly or in trust one or more unallocated annuity contracts not included in subdivision c, five million dollars in benefits, irrespective of the number of contracts with respect to the contract owner or plan sponsor. However, in the case in which one or more unallocated annuity contracts are covered contracts under this chapter and are owned by a trust or other entity for the benefit of two or more plan sponsors, coverage must be afforded by the association if the largest interest in the trust or entity owning the contract or contracts is held by a plan sponsor whose principal place of business is in this state and in no event is the association obligated to cover more than five million dollars in benefits with respect to all these unallocated contracts.

SECTION 27. AMENDMENT. Subsection 1 of section 29-06-15 of the North Dakota Century Code is amended and reenacted as follows:

1. A law enforcement officer, without a warrant, may arrest a person:
 - a. For a public offense, committed or attempted in the officer's presence; and for the purpose of this subdivision, a crime must be deemed committed or attempted in the officer's presence when what the officer observes through the officer's senses reasonably indicates to the officer that a crime was in fact committed or attempted in the officer's presence by the person arrested.
 - b. When the person arrested has committed a felony, although not in the officer's presence.
 - c. When a felony in fact has been committed, and the officer has reasonable cause to believe the person arrested to have committed it.
 - d. On a charge, made upon reasonable cause, of the commission of a felony by the party arrested.
 - e. For the public offenses, not classified as felonies and not committed in the officer's presence as provided for under section 29-06-15.1.
 - f. On a charge, made upon reasonable cause, of driving or being in actual physical control of a vehicle while under the influence of alcoholic beverages.
 - g. For the offense of violating a protection order under section 14-07.1-06, an order prohibiting contact under section 14-07.1-13, or for an assault involving domestic violence under section 14-07.1-11.
 - h. On a charge, made upon reasonable cause, of being under the influence of volatile chemical vapors in violation of section ~~42-1-31-06~~ 19-03.1-22.1.

SECTION 28. AMENDMENT. Subsection 9 of section 32-03.2-11 of the North Dakota Century Code is amended and reenacted as follows:

9. In a civil action involving a motor vehicle accident resulting in bodily injury, it is sufficient for the trier of fact to consider an award of exemplary damages against the driver under the motion procedures provided in subsection 1 if clear and convincing evidence indicates that the accident was caused by a driver who, within the five years immediately preceding the accident has been convicted for violation of section 39-08-01 and who was operating or in physical control of a motor vehicle:
 - a. With an alcohol concentration of at least ten one-hundredths of one percent by weight;
 - b. Under the influence of a controlled substance unless a drug that predominantly caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to the driver;

- c. Under the influence of alcohol and refused to take a test required under chapter 39-20; or
- d. Under the influence of a volatile chemical as listed in section ~~42-1-31-06~~ 19-03.1-22.1.

At the trial in an action in which the trier of fact will consider an award of exemplary damages, evidence that the driver has been convicted of violating section 39-08-01 or an equivalent statute or ordinance is admissible into evidence.

SECTION 29. AMENDMENT. Section 38-08-09.9 of the North Dakota Century Code is amended and reenacted as follows:

38-08-09.9. Enlargement of area - Creation of new units - Amendment of plan. The unit area of a unit may be enlarged at any time by the commission, subject to the limitations hereinbefore provided to include adjoining portions of the same common source of supply, including the unit area of another unit, and a new unit created for the unitized management, operation, and further development of such enlarged unit area, or the plan of unitization may be otherwise amended, all in the same manner, upon the same conditions and subject to the same limitations as provided with respect to the creation of a unit in the first instance, except, that where an amendment to a plan of unitization relates only to the rights and obligations as between lessees, or the amendment to a plan of unitization or the enlargement of a unit area is found by the commission to be reasonably necessary in order to effectively carry on the joint effort, to prevent waste, and to protect correlative rights, and that such will result in the general advantage of the owners of the oil and gas rights within the unit area and the proposed enlarged unit area, and the persons and owners in the proposed added unit area have ratified or approved the plan of unitization as required by section 38-08-09.5, then such amendment to a plan of unitization or the enlargement of a unit area need not be ratified or approved by royalty owners of record in the existing unit area provided that written notice thereof is mailed to such royalty owners by the operator of a unit not more than forty days nor less than thirty days prior to the commission hearing. The notice must describe the plan for the unit amendment or enlargement together with the participation factor to be given each tract in the unit area and in the proposed area and must contain the time and place of the commission hearing. An affidavit of mailing verifying such notice must be filed with the commission. Said notice must further provide that in the event ten percent of the royalty interests or working interests in the existing unit area file with the commission at least ten days prior to the commission proceeding an objection to the plan of enlargement, the commission shall require that the unit amendment or enlargement be approved by ~~seventy~~ sixty percent of all royalty interests and working interests in the existing and proposed areas.

²⁷ **SECTION 30. AMENDMENT.** Subsection 7 of section 40-63-07 of the North Dakota Century Code is amended and reenacted as follows:

7. Income to a renaissance fund organization derived from the sale or refinancing of zone properties financed wholly or in part by the organization may be ~~dispersed~~ disbursed as annual dividends equal to

²⁷ Section 40-63-07 was also amended by section 1 of Senate Bill No. 2259, chapter 351.

the income, minus ten percent, derived from all sources and proportional to the investment. In the event of a loss to the fund resulting in a temporary diminishment of the fund below the original principal amount, no annual dividend may be paid until the fund is restored.

²⁸ **SECTION 31. AMENDMENT.** Subdivision e of subsection 1 of section 41-09-02 of the North Dakota Century Code is amended and reenacted as follows:

- e. "Agricultural lien" means an interest, other than a security interest, in farm products:
 - (1) That secures payment or performance of an obligation for:
 - (a) Goods or services furnished in connection with a debtor's farming operation or in connection with processing, production, or entrustment of the farm products; or
 - (b) Rent on real property leased by a debtor in connection with the debtor's farming operation;
 - (2) That is created by statute in favor of a person that:
 - (a) ~~Finished~~ Furnished goods or services in connection with processing, production, or entrustment of the farm product or in the ordinary course of that person's business furnished goods or services to a debtor in connection with a debtor's farming operation; or
 - (b) Leased real property to a debtor in connection with the debtor's farming operation; and
 - (3) Of which the effectiveness does not depend on the person's possession of the personal property.

²⁹ **SECTION 32. AMENDMENT.** Subsection 4 of section 43-17-07.1 of the North Dakota Century Code is amended and reenacted as follows:

- 4. Require information on an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, including the federation of state medical boards action 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 ~~or to the commission on medical competency.~~

²⁸ Section 41-09-02 was also amended by section 1 of House Bill No. 1070, chapter 352, and section 2 of House Bill No. 1070, chapter 352.

²⁹ Section 43-17-07.1 was also amended by section 1 of Senate Bill No. 2253, chapter 358.

SECTION 33. AMENDMENT. Subsection 2 of section 44-04-18 of the North Dakota Century Code is 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. The entity may charge a reasonable fee for making or mailing the copy, or both. An entity may require payment before making or mailing the copy, or both. 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. As used in this subsection, "reasonable fee" means the actual cost to the public entity of making or mailing a copy of a record, or both, including labor, materials, postage, and equipment, but excluding any cost associated with excising confidential or closed material under section ~~44-04-18.8~~ 44-04-18.10. 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. This subsection does not apply to copies of public records for which a different fee is specifically provided by law.

SECTION 34. AMENDMENT. Section 49-01-02 of the North Dakota Century Code is amended and reenacted as follows:

49-01-02. Public service commission - How constituted. The three persons elected public service commissioners, pursuant to the provisions of article V, section ~~42~~ 2 of the Constitution of North Dakota, constitute and shall be known and designated as the public service commission of the state of North Dakota. They shall elect one of their number president of the commission and shall appoint a secretary.

³⁰ **SECTION 35. AMENDMENT.** Subsection 5 of section 54-52.1-01 of the North Dakota Century Code is amended and reenacted as follows:

5. "Health maintenance organization" means an organization certified to establish and operate a health maintenance organization in compliance with chapter ~~26.1-18~~ 26.1-18.1.

³¹ **SECTION 36. AMENDMENT.** Subsection 2 of section 57-02-26 of the North Dakota Century Code is amended and reenacted as follows:

³⁰ Section 54-52.1-01 was also amended by section 1 of Senate Bill No. 2060, chapter 499.

³¹ Section 57-02-26 was also amended by section 1 of Senate Bill No. 2350, chapter 513.

2. Property held under an easement or a lease for a term of years and any improvements upon that property which are used for any purpose relating to discovery, exploration, processing, or transportation of oil or gas must be considered the property of the ~~lease~~ lessee or easement holder. For the purposes of this subsection, "improvements" does not include property subject to the provisions of chapter 57-06 or property subject to the in lieu of ad valorem tax provisions of chapter 57-51.

Approved March 20, 2003

Filed March 20, 2003

CHAPTER 49**SENATE BILL NO. 2410**

(Senators Bercier, Fairfield, Nichols, O'Connell, Tallackson)
(Representative Boucher)

FIRST NATIONS DAY

AN ACT to create and enact a new section to chapter 1-03 of the North Dakota Century Code, relating to First Nations Day.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

First Nations Day. To recognize the indigenous peoples of the State of North Dakota and their contributions to the state and to the United States, the governor shall issue a proclamation each year designating the Friday before the second Monday in October as First Nations Day.

Approved April 14, 2003
Filed April 14, 2003

CHAPTER 50**HOUSE BILL NO. 1059**

(Representatives Thoreson, Carlisle, Devlin, Ekstrom)
(Senators Mathern, Robinson)

SERVICE OF PROCESS ON ELECTION DAY

AN ACT to amend and reenact section 1-08-09 of the North Dakota Century Code, relating to the service of process on election day.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-08-09 of the North Dakota Century Code is amended and reenacted as follows:

1-08-09. No Service of civil process served on election day. During the day on which any general or special election ~~shall be~~ is held in this state, or in any district, county, city, or precinct ~~therein~~, ~~no~~ civil process may not be served on any person entitled to vote at ~~such~~ the election within one hundred feet [30.48 meters] from any entrance leading into a polling place.

Approved March 7, 2003
Filed March 7, 2003

AERONAUTICS

CHAPTER 51

SENATE BILL NO. 2254

(Senators Fischer, Flakoll, Trenbeath)
(Representatives Froelich, Monson)

AERIAL SPRAYING LICENSE

AN ACT to amend and reenact section 2-05-18 of the North Dakota Century Code, relating to a license for aerial spraying.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-05-18 of the North Dakota Century Code is amended and reenacted as follows:

2-05-18. License for aerial spraying - Regulations - Penalties Penalty.
~~No~~ A person may not engage in aerial spraying without ~~first obtaining~~ a license ~~for each aircraft used in such activities as provided in this section~~ from the North Dakota aeronautics commission. Application must be made ~~for such license to the North Dakota aeronautics commission~~ by a commercial aerial sprayer in the name of the business and each application must be made upon forms provided by the commission for such purpose. Upon the payment of a license fee ~~of fifteen dollars for each aircraft to be licensed, not to exceed two hundred dollars,~~ and upon compliance with ~~such reasonable rules and regulations as may be promulgated adopted~~ by the aeronautics commission for the safety and protection of persons and property, the commission shall issue a license ~~for such aircraft to be used in to an applicant for an aerial spraying license.~~ Persons engaged in private spraying are required to pay the same fee for the use of aircraft for this purpose, and shall comply with all rules and regulations promulgated by the commission for aerial spraying. The license and fees provided in this section are in addition to any other license or registration required by law, and the proceeds must be deposited in the aeronautics commission special fund. ~~Any~~ A person violating ~~any provision of this section or rules or regulations promulgated adopted~~ under the authority of this section shall be ~~is~~ guilty of a class B misdemeanor.

Approved April 9, 2003
Filed April 9, 2003

CHAPTER 52**SENATE BILL NO. 2178**

(Senator Urlacher)
(Representatives Haas, F. Klein)

AIRPORT AUTHORITY DISSOLUTION

AN ACT to amend and reenact sections 2-06-02 and 2-06-03 of the North Dakota Century Code, relating to the dissolution of airport authorities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 2-06-02 of the North Dakota Century Code is amended and reenacted as follows:

2-06-02. Creation of municipal airport authority - Dissolution.

1. Any municipality ~~may~~, by resolution of its governing body, may create a public body corporate and politic to be known as a municipal airport authority, which is authorized to exercise its functions upon the appointment and qualification of the first commissioners thereof; or the governing body ~~may~~ by resolution may determine to exercise any or all powers granted to such authorities in this chapter until or unless such powers are or have been conferred upon a municipal or regional airport authority. Upon the adoption of a resolution creating a municipal airport authority, the governing body of the municipality ~~shall~~, pursuant to the resolution, shall appoint five persons as commissioners of the authority. The commissioners who are first appointed are designated to serve for terms of one, two, three, four, and five years, respectively, but thereafter, each commissioner ~~shall~~ must be appointed for a term of five years, except that vacancies occurring otherwise than by expiration of term must be filled for the unexpired term by the governing body.
2. After payment of all debts, a municipal airport authority may be dissolved by resolution of the governing body of the municipality. Before dissolution, the property of the airport authority either must be transferred to the municipality or sold.

SECTION 2. AMENDMENT. Section 2-06-03 of the North Dakota Century Code is amended and reenacted as follows:

2-06-03. Creation of regional airport authority - Dissolution.

1. Two or more municipalities, whether in this state or in an adjoining state, provided that at least one municipality is in North Dakota, ~~may~~ by joint resolution, may create a public body, corporate and politic, to be known as a regional airport authority which is authorized to exercise its functions upon the issuance by the secretary of state of a certificate of incorporation. The governing bodies of the municipalities participating in the creation of a regional airport authority ~~shall~~, pursuant to such joint resolution, shall appoint ~~not less than~~ at least five persons as commissioners of the regional airport authority. The number to be appointed and their representation must be provided for in the joint

resolution. The term of office of each regional airport authority commissioner must be in accordance with subsection 5. Each such regional airport authority, once created, shall organize, elect officers for terms of office to be fixed by agreement, and adopt and amend from time to time rules for its own procedure not inconsistent with section 2-06-06.

2. A regional airport authority may be increased from time to time to serve one or more additional municipalities if each additional municipality and each of the municipalities then included in the regional authority and the commissioners of the regional authority, respectively, adopt a resolution consenting thereto; provided, that if a municipal airport authority for any municipality seeking to be included in the regional authority is then in existence, the commissioners of the municipal authority must consent to the inclusion of the municipality in the regional authority, and if the municipal authority has any bonds outstanding, one hundred per centum of the holders of the bonds must consent, in writing, to the inclusion of the municipality in the regional authority. Upon the inclusion of any municipality in the regional authority, all rights, contracts, obligations, and property, real and personal, of the municipal authority ~~shall~~ must be in the name of and vest in the regional authority.
3. A regional airport authority may be decreased if each of the municipalities then included in the regional authority and the commissioners of the regional authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities; provided that, if the regional authority has any bonds outstanding no decrease may be effected unless one hundred per centum of the holders of the bonds consent thereto in writing.
4. A municipality may not adopt any resolution authorized by this section without a public hearing thereon. Notice thereof must be given at least ten days prior thereto in a newspaper published in the municipality, or if there is no newspaper published therein, then in a newspaper having general circulation in the municipality.
5. All commissioners of a regional airport authority must be appointed for terms of five years each, except that a vacancy occurring otherwise than by expiration of term ~~shall~~ must be filled for the unexpired term in the same manner as the original appointments.
6. After payment of all debts, a regional airport authority may be dissolved by a joint resolution of the governing bodies of the participating municipalities. Before dissolution, the property of the regional airport authority must be sold, transferred, or distributed as agreed by the participating municipalities. Any remaining funds of the regional airport authority must be distributed to the general funds of the participating municipalities in proportion to their support of the regional airport authority.

AGRICULTURE

CHAPTER 53

SENATE BILL NO. 2124

(Agriculture Committee)

(At the request of the Seed Commissioner)

NOXIOUS WEED SEED TOLERANCES

AN ACT to amend and reenact section 4-09-13 of the North Dakota Century Code, relating to noxious weed seed tolerances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-13 of the North Dakota Century Code is amended and reenacted as follows:

4-09-13. (Effective through July 31, 2003) Tolerances. The tolerances used in determining correctness and accuracy in labeling seed as described in this chapter must be those tolerances used under the Federal Seed Act of August 9, 1939, and subsequent amendments as of July 1, 2001, except that the tolerance for yellow starthistle must be zero and the commissioner may, by rule, establish tolerances that are more strict than the Federal Seed Act tolerances.

(Effective after July 31, 2003) Tolerances. The tolerances used in determining correctness and accuracy in labeling seed as described in this chapter must be those tolerances used under the Federal Seed Act of August 9, 1939 [53 Stat. 1275; 7 U.S.C. 1551 et seq.], and subsequent amendments ~~thereto~~ as of December 31, 2002, except that the tolerance for yellow starthistle must be zero and the commissioner may, by rule, establish tolerances that are more strict than the Federal Seed Act tolerances.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 54

SENATE BILL NO. 2206

(Senators Nichols, Erbele, Urlacher)
(Representatives Onstad, Pollert, Skarphol)

SEED SALE REQUIREMENTS

AN ACT to amend and reenact section 4-09-14 of the North Dakota Century Code, relating to requirements for the sale of seed.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-14 of the North Dakota Century Code is amended and reenacted as follows:

4-09-14. (Effective through July 31, 2003) Prohibitions.

1. It is unlawful for any person to 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 if:
 - a. The test to determine the percentage of germination required under sections 4-09-10, 4-09-11, 4-09-11.1, and 4-09-11.2 has not been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation, provided that seeds contained in a hermetically sealed container, as defined by regulation issued by the seed commissioner, may be sold, transported for sale, or held for sale unless the test provided in this subdivision has not been completed within a thirty-six-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation for sale;
 - b. The seed is not labeled in accordance with the provisions of this chapter or bears false or misleading labeling;
 - c. There has been false or misleading advertising in connection with the seed;
 - d. The seed contains prohibited noxious weed seeds;
 - e. With regard to agricultural or vegetable seed, the seed is not labeled to show the rate of occurrence of restricted noxious weed seeds, as required under sections 4-09-10 and 4-09-11;
 - f. The seed is designated, offered, represented, or advertised under any name or identification other than that by which it was known originally;
 - g. The seed contains restricted noxious weed seeds in excess of twenty-five seeds per pound [453.59 grams]; or

- h. The percentage by weight of all weed seeds in the seed exceeds one percent.

Any person, under rules adopted by the commissioner, 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 tests the commissioner considers necessary, and if the commissioner finds as a result of the tests 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. 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.

- 2. It is unlawful for any person in this state to:
 - 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 or the commissioner's agent, and only for the purpose specified in such written permission;
 - h. Use the name of the state seed 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.

(Effective after July 31, 2003) Prohibitions.

1. It is unlawful for any person to 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 if:
 - a. The test to determine the percentage of germination required under sections ~~4-09-10~~, ~~4-09-11~~, ~~4-09-11.1~~, and ~~4-09-11.2~~ has not been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation, provided that seeds contained in a hermetically sealed container, as defined by regulation issued by the seed commissioner, may be sold, transported for sale, or held for sale unless the test provided in this subdivision has not been completed within a thirty-six-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation for sale;
 - b. Such seed is not labeled in accordance with the provisions of this chapter or bears false or misleading labeling;
 - c. There has been false or misleading advertising in connection with such seed;
 - d. Such seed contains prohibited noxious weed seeds;
 - e. With regard to agricultural or vegetable seed, such seed is not labeled to show the rate of occurrence of restricted noxious weed seeds, as required under sections ~~4-09-10~~ and ~~4-09-11~~;
 - f. Such seed is designated, offered, represented, or advertised under any name or identification other than that by which it was known originally;
 - g. Such seed contains restricted noxious weed seeds in excess of ninety seeds per pound [453.59 grams]; or
 - h. The percentage by weight of all weed seeds in the seed exceeds one percent.

Any person, under rules and regulations to be made therefor by the commissioner, 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 such seed, together with a proposed, distinctive name therefor. The commissioner, within one year, shall make such tests as the commissioner considers necessary, and if the commissioner finds as a result of such tests that such seed or plant is of a new variety, distinct from any variety of such seed known theretofore and that the name proposed therefor will properly distinguish said seed from any and all other varieties thereof, the commissioner shall issue to the person applying therefor a permit to designate such seed by said name. 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 and in conformity to the requirements of 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 thereof in lieu of the labeling provided for in this chapter.

2. It is unlawful for any person in this state to:
 - 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 or the commissioner's agent, and only for the purpose specified in such written permission;
 - h. Use the name of the state seed 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.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 55**SENATE BILL NO. 2256**
(Senators Klein, Grindberg, Nichols)
(Representatives Belter, Nicholas, Pollert)**PLANT AND SEED RECORD CONFIDENTIALITY**

AN ACT to create and enact a new section to chapter 4-09 of the North Dakota Century Code, relating to plant and seed records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-09 of the North Dakota Century Code is created and enacted as follows:

Plant and seed records - Exempt. The following records of the state seed commission are exempt from section 44-04-18:

1. Records of any plant or seed analysis or testing and variety or disease determination conducted by the state seed department on a fee-for-service basis for nonpublic entities or persons.
2. Information received by the seed commission under chapter 4-09, 4-10, or 4-42 from a nonpublic entity or person that the nonpublic entity or person determines is propriety information or a trade secret.

Approved March 13, 2003
Filed March 13, 2003

CHAPTER 56**SENATE BILL NO. 2326**

(Senators Klein, Tallackson)

(Representative DeKrey)

WHOLESALE POTATO DEALER LICENSES AND FEES

AN ACT to create and enact three new sections to chapter 4-11 of the North Dakota Century Code, relating to wholesale potato dealers; to amend and reenact sections 4-11-01, 4-11-02, 4-11-03, 4-11-04, 4-11-06, 4-11-07, 4-11-08, 4-11-09, 4-11-10, 4-11-12, 4-11-13, 4-11-14, 4-11-15, 4-11-16, 4-11-17, 4-11-18, 4-11-19, 4-11-20, 4-11-21, 4-11-22, 4-11-23, and 4-11-24 of the North Dakota Century Code, relating to wholesale potato dealers; to repeal sections 4-11-05 and 4-11-11 of the North Dakota Century Code, relating to wholesale potato dealers' licenses and fee schedules; to provide a penalty; to provide for a continuing appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-11-01 of the North Dakota Century Code is amended and reenacted as follows:

4-11-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the state seed commissioner.
2. ~~"Person" means an individual, firm, copartnership, corporation, limited liability company, company, society, or association, and implies both the singular and the plural as the case requires.~~
3. ~~"Potatoes"~~ "Insolvency" means an unableness or unwillingness to provide payment for potatoes purchased by the dealer.
3. "Potato" means what a tuber commonly are classed as white or Irish potatoes.
4. "Wholesale potato dealer" means any person who buys ~~or sells,~~ contracts to buy or sell, potatoes in wholesale lots directly from a grower or grower cooperative, who sells or handles potatoes in wholesale lots for the purpose of processing or resale, or who handles potatoes on account of or as an agent for another, any potatoes as defined herein.

SECTION 2. AMENDMENT. Section 4-11-02 of the North Dakota Century Code is amended and reenacted as follows:

4-11-02. Wholesale potato dealer license required. ~~No~~ Before a person may engage in, or purport to be engaged in, the business of a wholesale potato dealer, ~~or advertise as such, unless he is~~ the person must be licensed to carry on such business by the commissioner.

SECTION 3. AMENDMENT. Section 4-11-03 of the North Dakota Century Code is amended and reenacted as follows:

4-11-03. Application for license - Contents. ~~The application for license must be made to~~ To obtain a license as a wholesale potato dealer, a person must complete an application and submit it to the commissioner in writing and under oath, and must set forth. The application must be signed by the applicant under oath and must include:

1. The place or places where location in which the applicant intends to carry on the business for which the license is desired operate as a wholesale potato dealer.
2. The estimated amount of business to be done monthly.
3. The amount of business done the preceding year, if any.
4. The greatest volume of potatoes, by hundredweight, purchased during any one month in the preceding calendar year.
5. The greatest value of potatoes purchased during any one month in the preceding calendar year.
6. The full name of the persons constituting the firm each partner if the applicant is a copartnership partnership.
- 5- 7. The name of the officers of the each corporate officer and the state of incorporation if the applicant is a corporation and where it is incorporated if the applicant is a corporation.
- 6- 8. The name of the managers of the each manager and the state of organization if the applicant is a limited liability company and where it is organized if the applicant is a limited liability company.
9. The name of every agent employed by the applicant on the date of the application.
- 7- 10. A financial statement prepared in accordance with generally accepted accounting principles and showing in a general way the value and character of the assets and the amount of liabilities of the applicant.
- 8- 11. Statements showing the applicant's eligibility for a similar license A list of similar licenses issued to the applicant in other states in which he may have operated or is operating at the time of the application.

The fee for the license must accompany the application.

12. The name of every state that has:
 - a. Denied the applicant's request for similar licensure;
 - b. Denied a request for similar licensure submitted by an agent employed by the applicant;
 - c. Issued to the applicant a similar license and thereafter suspended or revoked the license; or
 - d. Issued to an agent of the applicant a similar license and thereafter suspended or revoked the agent's license.

SECTION 4. AMENDMENT. Section 4-11-04 of the North Dakota Century Code is amended and reenacted as follows:

4-11-04. Bond Form of security to accompany application for license - Terms - Liability under. The commissioner may require the applicant shall execute and file a bond issued in favor of the commissioner, with the sureties, amount, and form of the bond to be fixed by the commissioner, or the applicant may give a letter of credit from a bank in lieu of a bond if approved by the state seed commissioner, conditioned:

1. ~~For the faithful performance of his duties as a wholesale potato dealer.~~
2. ~~For the observance of all laws relating to the carrying on of the business of a wholesale potato dealer.~~
3. ~~For the payment when due of the purchase price of potatoes purchased by him.~~
4. ~~For the prompt settlement and payment of all claims and charges due to this state for services rendered or otherwise.~~
5. ~~For the prompt reporting of sales to all persons consigning potatoes to the licensee for sale on commission.~~
6. ~~For the prompt payment to the persons entitled thereto of the proceeds of all sales, less lawful charges, disbursements, and commissions.~~

The bond must cover all wholesale potato business transacted in whole or in part within the state, and the liability for acts thereunder must be only for the period the license is in force. The surety may terminate its liability under such bond at any time by giving the commissioner notice of termination. Such notice must specify that the surety desires to terminate its liability under the bond, and such liability must be terminated thirty days after the receipt of such notice by the commissioner. The commissioner immediately shall notify the licensee to furnish a new bond, and if the licensee fails to furnish a bond satisfactory to the commissioner, he shall suspend or cancel the license of such licensee. No surety is liable for any acts performed by the licensee after the expiration of the aforesaid thirty-day period, but the surety is liable, as provided by the terms of the said bond, for any acts performed by the licensee prior to the effective date of such cancellation to file a current financial statement prepared in accordance with generally accepted accounting principles, a cash bond or a surety bond in an amount and form determined by the commissioner, or an irrevocable letter of credit. The form of security required by the commissioner must be conditioned for the faithful performance of the applicant's duties as a wholesale potato dealer, for compliance with all laws and rules relating to the purchase of potatoes by the dealer, for prompt payment in the case of insolvency, and for the protection and benefit of any potato producer in this state during the period the license is in effect.

SECTION 5. A new section to chapter 4-11 of the North Dakota Century Code is created and enacted as follows:

Termination of bond - Notice to commissioner. The surety may terminate its liability under a bond by giving the commissioner at least ninety days notice of intent to terminate. The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date the commissioner received the notice or on a later date specified by the surety. This section does not

relieve, release, or discharge the surety from any liability incurred before the expiration of the ninety-day period. Unless the wholesale potato dealer files a new bond at least thirty days before the surety's liability ceases, the commissioner, without hearing, shall suspend the wholesale potato dealer's license. The commissioner may not remove the suspension until a new bond or other form of surety has been filed and approved by the commissioner.

SECTION 6. AMENDMENT. Section 4-11-06 of the North Dakota Century Code is amended and reenacted as follows:

4-11-06. License - Fee - Expiration. ~~The fee for each license must be set by the state seed commissioner. All licenses expire~~ shall establish the fee for a wholesale potato dealer's license. The license expires on June thirtieth of each year.

SECTION 7. AMENDMENT. Section 4-11-07 of the North Dakota Century Code is amended and reenacted as follows:

4-11-07. License - Posting. ~~The wholesale potato dealer shall post the license, or a certified copy thereof, must be kept posted of the license in the office of the licensee at each place within the state where he~~ at each location where the dealer transacts business.

SECTION 8. AMENDMENT. Section 4-11-08 of the North Dakota Century Code is amended and reenacted as follows:

4-11-08. Refusal, cancellation, or suspension of license - Grounds.

1. The refusal, cancellation, or suspension of commissioner may refuse to issue a license to operate as a wholesale potato dealer if:
 - a. The applicant was refused a wholesale potato dealer's license in another state;
 - b. The applicant had a wholesale potato dealer's license suspended or revoked in another state may constitute grounds for the same action in this state at the discretion of the commissioner. If any licensee or applicant for a license has in his employ in a position of responsibility any person who has held a license to operate as a wholesale potato dealer in this or any other state, and such license has been canceled or suspended, such condition may constitute a ground, at the discretion of the commissioner, for the refusal, suspension, or cancellation of a license in this state while the aforesaid cancellation or suspension is effective.; or
 - c. The applicant employs in a position of responsibility an individual who had a wholesale potato dealer's license suspended or revoked in another state.
2. The commissioner may suspend or revoke a license to operate as a wholesale potato dealer if:
 - a. The dealer was the subject of a license suspension or revocation in another state;
 - b. The dealer had a wholesale potato dealer's license suspended or revoked in another state; or

- c. The dealer employs in a position of responsibility an individual who had a wholesale potato dealer's license suspended or revoked in another state.

SECTION 9. AMENDMENT. Section 4-11-09 of the North Dakota Century Code is amended and reenacted as follows:

4-11-09. Agent of licensee - Ineligibility. ~~The commissioner may make the provisions which are specified in section 4-11-08 as grounds for disqualification of a licensee or applicant for a license, or the fact that an individual is ineligible to act as an agent for a potato dealer in another state, operate as grounds for the disqualification of an individual to determine that an individual may not act as an authorized agent for a licensee if the individual was refused a wholesale potato dealer's license in another state or if the individual had a wholesale potato dealer's license suspended or revoked in another state.~~

SECTION 10. AMENDMENT. Section 4-11-10 of the North Dakota Century Code is amended and reenacted as follows:

4-11-10. Identification cards required. ~~The principal~~ A licensed wholesale potato dealer shall secure obtain from the commissioner an identification card for each of his agents agent and for an each individual licensee operating as his an agent to place the public on notice that the persons soliciting potatoes from place to place are working as agents of a licensed dealer. The agents. Each agent shall carry the identification card with them at all times while whenever the agent is soliciting or transacting potato business for the licensee. The commissioner shall charge a fee for each identification card is one dollar.

SECTION 11. AMENDMENT. Section 4-11-12 of the North Dakota Century Code is amended and reenacted as follows:

4-11-12. Licensee to keep accounts Accounts and records. ~~The licensee~~ A wholesale potato dealer shall keep accurate accounts and records of all transactions as a wholesale potato dealer and shall retain them, subject to the examination of the commissioner, the records for a period of eighteen months after their respective events. The commissioner is entitled access to the records at all times.

SECTION 12. AMENDMENT. Section 4-11-13 of the North Dakota Century Code is amended and reenacted as follows:

4-11-13. Licensee's duty when discontinuing Discontinuation of business - Duty of dealer. ~~Whenever a licensee~~ If a wholesale potato dealer sells, disposes of, or discontinues his business the business for which the dealer obtained a license, during the period covered by his the license, he immediately the dealer shall notify the commissioner in writing and, upon demand at the request of the commissioner, shall produce before the commissioner a full statement of all of his assets and liabilities as of the date of the transfer or discontinuance of said the business was sold, disposed of, or discontinued.

SECTION 13. AMENDMENT. Section 4-11-14 of the North Dakota Century Code is amended and reenacted as follows:

4-11-14. Bonds - Additional required. ~~The commissioner, whenever he is of the opinion that any bond given by a licensee is inadequate for the proper protection of the public, may at any time require the licensee to give additional bonds~~

in such amounts as from time to time the commissioner may determine, with sureties to be approved by him and conditioned as set forth in section 4-11-04. For the purpose of fixing or changing the amount of such bonds, the an increase in the amount of the wholesale potato dealer's bond. The commissioner may at any time require verified financial statements of his business from any licensee, and if the licensee from a dealer. If a dealer fails to furnish such the information or fails to furnish a new or higher bond when directed by the commissioner ~~so to do~~, the commissioner ~~forthwith may~~ shall suspend such the dealer's license, and ~~after~~. After providing the dealer with at least ten days' notice and an opportunity to be heard, a hearing, the commissioner may revoke his the dealer's license.

SECTION 14. AMENDMENT. Section 4-11-15 of the North Dakota Century Code is amended and reenacted as follows:

4-11-15. Damage claims against bonds - Hearing - Procedure. Any

1. If a person claiming to be damaged by any breach of the conditions of a bond given by a licensee may file with notifies the commissioner a verified statement of the fact or facts constituting his complaint. Upon the filing of such complaint, the commissioner shall investigate the charges made, and may order a hearing before himself or his duly authorized agent, and shall give the person complained of notice of the filing of such complaint and of the time and place of such hearing. At the conclusion of the hearing, the commissioner, or his agent conducting it, shall report his findings and render his conclusion upon the matter complained of to the complainant and respondent in each case. The respondent has fifteen days in which to make effective and satisfy such conclusions. If such settlement is not effected within the time aforesaid, any party aggrieved by the breach of any condition of the bond, after first obtaining the approval of the commissioner, may commence and maintain an action against the principal and sureties on the bond of the party complained of. The written approval of the commissioner to the bringing of the action must be attached to and made a part of the original complaint in such action. Upon commencing such action, the plaintiff shall file a copy of his complaint in the office of the commissioner. The record of the hearing before the commissioner or his agent, when properly certified to, is competent evidence in any court having jurisdiction of such action. If a licensee has become liable to more than one person by reason of breaches of the conditions of the bond and the amount of the bond is insufficient to pay the entire liability to all persons entitled to the protection of the bond, the penalty of the bond, as against the sureties, must be apportioned among the several claimants. In all cases where the liability of the licensee exceeds the amount of his bond, the commissioner shall commence an action for the recovery of the full amount of the bond, and in any action wherein a recovery is had, the commissioner, subject to the approval of the court, shall pass upon and allow or disallow all claims which may be presented to him within sixty days after the recovery on the bond, for full or apportioned payment from the amount recovered. To effect the purposes herein, the commissioner may employ counsel and pay the fee and expenses thereof out of the amount recovered on such bond that a wholesale potato dealer has breached any of the conditions for which security was given under this chapter, the commissioner shall investigate the allegation.

2. The commissioner may hold a hearing to obtain additional testimony and documentary evidence. If the commissioner determines that the allegation is supportable, the commissioner shall apply to the district court of the county in which the claim is alleged to have occurred for appointment as trustee.
3. Upon notice to the wholesale potato dealer as the court may prescribe or upon waiver of notice by the dealer, the court shall hear the matter in a summary manner. If the court determines that the dealer has breached any condition for which security was given under section 4-11-04, and if the court determines that it would be in the best interest of all persons holding claims against the dealer that the commissioner execute the trust, the court shall issue an order appointing the commissioner as a trustee, without bond. The commissioner shall proceed in the manner provided for in this chapter.
4. The commissioner, as trustee, shall notify all persons having claims against the dealer by certified mail that the claims must be filed with the commissioner by a date certain. Any person who fails to file a claim within the time allotted is barred from participation in any fund marshalled by the commissioner under this chapter.
5. All moneys collected and received by the commissioner as trustee must be deposited in the Bank of North Dakota pending the marshalling of the fund.

SECTION 15. A new section to chapter 4-11 of the North Dakota Century Code is created and enacted as follows:

Recovery of trust fund - Report - Notice to claimants. Upon recovery of the trust fund, or so much of the fund as is possible to recover or as is necessary to pay all outstanding claims, the commissioner shall file the report in court showing the amount payable on each claim. If the fund is insufficient to pay all claims in full, the commissioner shall prorate the fund among the claimants. The court shall notify the claimants by mail regarding the proposed distribution and direct that the claimants show cause why the report should not be approved and distribution made in accordance with the report. After holding a hearing on the matter, the court shall approve or modify the report, issue an order directing the distribution of the fund, and discharge the commissioner from all duties as trustee.

SECTION 16. A new section to chapter 4-11 of the North Dakota Century Code is created and enacted as follows:

Representation of commissioner by attorney general. The attorney general shall represent the commissioner in any action or proceeding brought under this chapter and may employ legal assistance when necessary. Any expenses incurred by the attorney general in providing representation to the commissioner may be deducted from the trust fund.

SECTION 17. AMENDMENT. Section 4-11-16 of the North Dakota Century Code is amended and reenacted as follows:

4-11-16. Inspection of potatoes - Right to demand - Certificate of inspection.

1. Whenever potatoes are ready for sale or are on their way to market, the owner, conveyor, prospective buyer, or any other interested party may demand and is entitled to inspection of ~~said~~ the potatoes and to an inspection certificate as ~~otherwise~~ provided for by law.
2. Whenever potatoes are shipped to or received by a wholesale potato dealer for handling, purchase, or sale in this state and ~~said~~ the dealer at wholesale finds the ~~same~~ potatoes to be ~~in~~ a spoiled, damaged, unmarketable, ~~or~~ in unsatisfactory condition, ~~or~~ mislabeled, or misrepresented in any way, unless both parties waive inspection before sale or other disposition ~~thereof~~, the wholesale potato dealer shall cause the ~~same~~ potatoes to be examined by an inspector assigned by the commissioner for that purpose. The inspector shall execute and deliver a certificate to the dealer, stating the day, the time, and the place of ~~such~~ inspection and the condition of ~~such~~ the potatoes. The dealer shall mail or deliver a copy of ~~such~~ the certificate to the shipper of the inspected potatoes ~~inspected~~.

SECTION 18. AMENDMENT. Section 4-11-17 of the North Dakota Century Code is amended and reenacted as follows:

4-11-17. Consignee of potatoes to make report. A wholesale potato dealer ~~of potatoes~~ to whom potatoes have been shipped or consigned for sale ~~on a commission basis or on consignment or under any circumstances wherein the~~ and to whom title to said potatoes remains with the shipper has not yet passed shall provide the shipper, within a reasonable time after receiving ~~the same,~~ shall make the potatoes, a written report ~~to the shipper showing~~ detailing the exact potatoes' time of arrival, the quantity, the quality, and the price per unit ~~of the potatoes,~~ and ~~at the same time, he shall.~~ At the time of providing the report, the wholesale potato dealer shall pay the shipper the net amount due ~~him~~ the shipper for the potatoes.

SECTION 19. AMENDMENT. Section 4-11-18 of the North Dakota Century Code is amended and reenacted as follows:

4-11-18. Sales reports unsatisfactory - Remedy of shipper. Whenever a shipper, after demand, receives no remittance or report of sale of potatoes, or is dissatisfied with the remittance, sale, or report ~~thereof, he may complain in writing to,~~ the shipper may file a complaint with the commissioner who shall investigate the matter complained of. Upon receipt of a complaint, the commissioner shall initiate an investigation.

SECTION 20. AMENDMENT. Section 4-11-19 of the North Dakota Century Code is amended and reenacted as follows:

4-11-19. Rules and regulations. The commissioner may adopt rules ~~and regulations, consistent with this chapter, to enforce to implement~~ to implement this chapter, to govern the rates charged by wholesale potato dealers, and the buying, selling, advertising, and trading practices of wholesale potato dealers, ~~and to provide necessary definitions of terms and conditions relative to this chapter.~~ Any rules and

regulations adopted by the commissioner must be adopted pursuant to chapter 28-32.

SECTION 21. AMENDMENT. Section 4-11-20 of the North Dakota Century Code is amended and reenacted as follows:

4-11-20. Conducting hearings and canceling licenses - Application of chapter 28-32 Investigation - Hearing - Action on license. ~~The~~ If the commissioner may receive complaints receives a complaint against any person dealing in, shipping, transporting, storing, or selling potatoes, ~~and may make any and all necessary investigations relative to the handling of, storing, shipping, or dealing in potatoes at wholesale, and he~~ the commissioner may initiate an investigation. ~~The commissioner and his~~ the commissioner's agents, at all times, shall have access, at all times, to all buildings, yards, warehouses, storage, and transportation facilities, and railway cars in which any potatoes are kept, stored, handled, or transported, and may take any necessary samples. ~~The~~ After an investigation, the commissioner, ~~upon complaint being filed with him for any alleged violation of the provisions of this chapter or the regulations issued thereunder, or upon information furnished by any of his agents or by any other person, forthwith may suspend and, upon ten days' notice and an opportunity to be heard, may~~ suspend the license of any wholesale potato dealer. The commissioner shall schedule, provide notice of, and hold a hearing on the suspension within ten days of the action. After receiving both testimony and documentary evidence, the commissioner may reverse the suspension, continue the suspension, or revoke and cancel any the wholesale potato dealer's license or any. ~~If appropriate, the commissioner may demand the return of any agent's identification card issued by him~~ the commissioner. Any hearing held ~~on any complaint or information received by the commissioner under this section~~ must be conducted pursuant to in accordance with chapter 28-32. Any aggrieved party may appeal a decision of the commissioner under this section to the district court in ~~the manner provided by in accordance with chapter 28-32.~~

SECTION 22. AMENDMENT. Section 4-11-21 of the North Dakota Century Code is amended and reenacted as follows:

4-11-21. Fees and collections - Disposition Revolving fund - Continuing appropriation. ~~All~~ The commissioner shall deposit all moneys arising from the collection of fees and other charges under the provisions of this chapter must be deposited by the commissioner with the state treasurer to be credited for credit to the seed department revolving fund, and. Moneys in this fund must be disbursed, within the limits of legislative appropriations therefrom, upon order of the commissioner, with the approval of the office of management and budget, and funds so approved by the office of management and budget are appropriated on a continuing basis.

SECTION 23. AMENDMENT. Section 4-11-22 of the North Dakota Century Code is amended and reenacted as follows:

4-11-22. Enforcement of chapter. The commissioner is charged with the enforcement of ~~the provisions of this chapter and of the all rules and regulations made and published thereunder. Upon complaint made by the commissioner or any other person, the~~ adopted to implement this chapter. The attorney general and or the state's attorney in the county where the a case arises shall prosecute all violations of this chapter and of the rules and regulations made and published thereunder.

SECTION 24. AMENDMENT. Section 4-11-23 of the North Dakota Century Code is amended and reenacted as follows:

4-11-23. Violations of chapter defined - Penalty.

1. Any A person subject to the provisions of this chapter, who is guilty of a class A misdemeanor if the person:
 4. a. Makes any false statement or report as to the grade, condition, markings, quality, or quantity of potatoes received or delivered, or ~~act acts in any a manner so as~~ designed to deceive the consignor or purchaser ~~thereof~~ of the potatoes;
 2. b. Refuses to accept, on agreed terms, any shipment for which the person has contracted for by him, unless ~~such~~ the refusal is based upon on a state inspection certificate, secured with reasonable promptness after ~~the receipt of such the~~ shipment, and showing that the kind or quality of potatoes is ~~other than~~ not that which was purchased or ordered by him;
 3. c. Fails to account for potatoes or to ~~make settlement therefor~~ pay for potatoes within the time ~~limited in~~ required by this chapter, ~~or who violates or fails to comply with the terms or conditions of any contract entered into by him for the purchase or sale of potatoes;~~
 4. d. Breaches any contract entered by the person for the purchase or sale of potatoes;
 - e. Purchases for ~~his~~ the person's own account any potatoes received on consignment, either directly or indirectly, without the consent of the consignor;
 5. f. Issues ~~any~~ false or misleading market quotations, ~~or cancels;~~
 - g. Cancels any quotations during the period advertised by him the person;
 6. h. Makes or collects any commission or charge in excess of that shown in his schedule filed with the commissioner any false or misleading statement on an application for licensure as a wholesale potato dealer;
 7. i. Increases the sales charges on shipped potatoes ~~shipped to him~~ by means of "~~dummy~~" or fictitious sales;
 8. j. Fails to keep accurate records and financial accounts of all transactions as a wholesale potato dealer;
 9. k. Receives potatoes from foreign states or countries for sale or resale, ~~either~~ within or without outside this state, and ~~give~~ gives the purchaser the impression through any method of advertising or description that the ~~said~~ potatoes are ~~of~~ from a source other than their true origin; or
 10. l. Violates ~~any of the provisions of this chapter, or any rule or regulation made or published thereunder by the commissioner,~~

is guilty of a class A misdemeanor, and his license forthwith may be suspended, revoked, or canceled by the commissioner upon ten days' notice and an opportunity

~~to be heard. Upon conviction of such offense, or upon conviction in any federal court for violation of the federal statutes relative to the~~ adopted to implement this chapter.

2. If the commissioner is notified that a wholesale potato dealer has been convicted of an offense listed in this section, of an offense involving fraudulent use of the mails, or of any other criminal acts act pertaining to the conduct of his business the person as a wholesale potato dealer, the commissioner forthwith shall revoke and cancel the license of the person so convicted provide at least ten days' notice and hold a hearing to determine whether the wholesale potato dealer's license should be suspended or revoked.

SECTION 25. AMENDMENT. Section 4-11-24 of the North Dakota Century Code is amended and reenacted as follows:

4-11-24. Cooperation with federal and state governmental agencies.

The commissioner may cooperate with ~~the United States department of agriculture and with other federal authorities~~ entities, and with the state and municipal authorities local entities, of this and other states, and may do ~~and perform such acts and all things as may be necessary and proper in carrying~~ to carry out the purposes of this chapter.

SECTION 26. REPEAL. Sections 4-11-05 and 4-11-11 of the North Dakota Century Code are repealed.

SECTION 27. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 4, 2003
Filed April 7, 2003

CHAPTER 57

SENATE BILL NO. 2222

(Senators Klein, Grindberg, Nichols)
(Representatives Kempenich, Mueller, Pollert)

ETHANOL PRODUCTION INCENTIVES

AN ACT to create and enact four new sections to chapter 4-14.1 of the North Dakota Century Code, relating to ethanol production subsidies; to amend and reenact sections 4-14.1-07, 39-04-39, and 57-43.1-03.1 of the North Dakota Century Code, relating to the distribution of motor vehicle registration fees and the taxation of motor vehicle fuel for agricultural purposes; to repeal section 4-14.1-07 of the North Dakota Century Code, relating to the duration and limitation of ethanol plant production incentives; to provide for a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-14.1 of the North Dakota Century Code is created and enacted as follows:

Definition. In this chapter, unless the context otherwise requires, "eligible facility" means an ethanol production plant constructed in this state after July 31, 2003.

SECTION 2. A new section to chapter 4-14.1 of the North Dakota Century Code is created and enacted as follows:

Ethanol production incentive - Calculation - Payment. The agricultural products utilization commission shall provide quarterly to each eligible facility a production incentive based on the average North Dakota price per bushel of corn received by farmers during the quarter, as established by the North Dakota agricultural statistics service and the average North Dakota rack price per gallon [3.79 liters] of ethanol during the quarter, as compiled by the American coalition for ethanol. The amount payable as a production incentive must be calculated by including the sum arrived at under subsection 1 with the sum arrived at under subsection 2.

1.
 - a. If the average quarterly price per bushel of corn is above one dollar and eighty cents, for each one cent by which the quarterly price is above one dollar and eighty cents, the agricultural products utilization commission shall add to the amount payable under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
 - b. If the average quarterly price per bushel of corn is one dollar and eighty cents, the agricultural products utilization commission shall add zero to any amount payable under this section.
 - c. If the average quarterly price per bushel of corn is below one dollar and eighty cents, for each one cent by which the quarterly price is below one dollar and eighty cents, the agricultural products utilization commission shall subtract from the amount payable

under this section one-tenth of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.

2. a. If the average quarterly rack price per gallon of ethanol is above one dollar and thirty cents, for each one cent by which the average quarterly rack price is above one dollar and thirty cents, the agricultural products utilization commission shall subtract from the amount payable under this section, two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.
- b. If the average quarterly rack price per gallon of ethanol is one dollar and thirty cents, the agricultural products utilization commission shall subtract zero from any amount payable under this section.
- c. If the average quarterly rack price per gallon of ethanol is below one dollar and thirty cents, for each one cent by which the average quarterly rack price is below one dollar and thirty cents, the agricultural products utilization commission shall add to the amount payable under this section two-tenths of one cent times the number of gallons of ethanol produced by the eligible facility during the quarter.

SECTION 3. A new section to chapter 4-14.1 of the North Dakota Century Code is created and enacted as follows:

Subsidy limitations. The agricultural products utilization commission may not distribute more than one million six hundred thousand dollars annually in payments under section 2 of this Act. No eligible facility may receive state ethanol payments that exceed a cumulative total of ten million dollars. 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.

SECTION 4. A new section to chapter 4-14.1 of the North Dakota Century Code is created and enacted as follows:

Ethanol production incentive fund - Continuing appropriation. There is created in the state treasury a special fund known as the ethanol production incentive fund. The fund consists of transfers made in accordance with section 39-04-39 and deposits made in accordance with section 57-43.1-03.1. All moneys in the fund are appropriated on a continuing basis to the agricultural products utilization commission for use in paying ethanol production incentives under sections 2 and 3 of this Act and section 4-14.1-07.

SECTION 5. AMENDMENT. Section 4-14.1-07 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-07. Duration and limitation of ethanol plant production incentives - Report to budget section. ~~Notwithstanding any other provision of law, an ethanol plant may not receive production incentives except as permitted under this section.~~

1. ~~An ethanol plant that was in operation before July 1, 1995, may not receive production incentives in the form of direct payments from the state for more than fourteen fiscal years of operation after June 30,~~

1995. An ethanol plant that begins operation after June 30, 1995, may not receive production incentives in the form of direct payments from the state for more than fourteen fiscal years of operation. After December 31, 2009, the state may not provide production incentives in the form of direct payments to any ethanol plant.

2. An ethanol plant that was in operation before July 1, 1995, and which has a production capacity of fewer than fifteen million gallons [56781000 liters] of ethanol may receive up to ~~seven~~ six hundred ~~thirty~~ thousand dollars in production incentives from the state for production in a fiscal year. An ethanol plant that was in operation before July 1, 1995, and which produced fifteen million [56781000 liters] or more gallons in the previous fiscal year ~~and an ethanol plant that begins operations after June 30, 1995, are each~~ is eligible to receive ~~an equal share in~~ up to ~~five~~ three hundred thousand dollars in production incentives from the state in a fiscal year.
2. The agricultural products utilization commission shall determine the amount of production incentives to which a plant is entitled under this section by multiplying the number of gallons of ethanol produced by the plant and marketed to a distributor or wholesaler by forty cents. The commission shall forward the production incentives to the plant upon receipt of an affidavit by the plant indicating that the ethanol is to be sold at retail to consumers. The affidavit must be accompanied by an affidavit from a wholesaler or retailer indicating that the ethanol is to be sold at retail to consumers. Within ninety days after the conclusion of the plant's fiscal year, the plant shall submit to the budget section of the legislative council a statement by a certified public accountant indicating whether the plant produced a profit from its operation in the preceding fiscal year, after deducting the payments received under this section.

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 million dollars.

SECTION 7. AMENDMENT. Section 57-43.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

57-43.1-03.1. (Effective through December 31, 2003) Refund of tax for fuel used for agricultural purposes - Reductions. Any consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund under this section must be reduced by seven cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users. Two cents per gallon [3.79 liters] withheld

from the refund must be deposited in the agricultural fuel tax fund, one cent per gallon [3.79 liters] withheld from the refund must be ~~retained~~ deposited in the ~~highway tax distribution~~ ethanol production incentive fund, and four cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural research fund.

(Effective January 1, 2004) Refund of tax for fuel used for agricultural purposes - Reductions. Any consumer who buys or uses any motor vehicle fuel for an agricultural purpose on which the motor vehicle fuel tax has been paid may file a claim with the commissioner for a refund under this chapter. The amount of the tax refund under this section must be reduced by six cents per gallon [3.79 liters] except for those fuels used in aircraft or with respect to refunds claimed by aircraft fuel users. ~~Two cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural fuel tax fund and four cents per gallon [3.79 liters] withheld from the refund must be deposited in the agricultural research fund.~~

SECTION 8. REPEAL. Section 4-14.1-07 of the North Dakota Century Code is repealed.

SECTION 9. EFFECTIVE DATE. Section 8 of this Act becomes effective on July 1, 2005.

Approved April 14, 2003
Filed April 14, 2003

CHAPTER 58**SENATE BILL NO. 2199**
(Senators Erbele, Klein, Nichols)
(Representatives Belter, Headland, Wald)**SOIL CONSERVATION DISTRICT MEMBERS**

AN ACT to create and enact a new section to chapter 4-22 of the North Dakota Century Code, relating to training for newly elected or appointed soil conservation district supervisors; and to amend and reenact section 4-22-04 of the North Dakota Century Code, relating to the soil conservation committee chairmanship.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-22-04 of the North Dakota Century Code is amended and reenacted as follows:

4-22-04. Committee - Chairman - Quorum - Compensation. The committee shall meet annually and select its chairman. The chairman shall serve for a term of one year from the date of selection ~~and is not eligible for a second term.~~ An individual may be selected as chairman for a total of three terms. Additional meetings may be held by the committee as considered necessary by the chairman, at a time and place to be fixed by the chairman. The chairman shall call special meetings upon written request of any four members. The members of the committee are entitled to receive forty-five dollars per day as compensation for their services on the committee, and are entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee, in the same manner and at the same rate as prescribed by law for state employees and officials.

SECTION 2. A new section to chapter 4-22 of the North Dakota Century Code is created and enacted as follows:

Soil conservation district supervisors - Training. As soon as practicable after an individual is elected or appointed to the position of a soil conservation district supervisor, the individual shall attend a training session delivered by the state soil conservation committee. An individual who has attended a training session as an elected or as an appointed soil conservation district supervisor may not be required to attend any additional or subsequent session.

Approved April 4, 2003
Filed April 4, 2003

CHAPTER 59

HOUSE BILL NO. 1486

(Representatives Nicholas, Boucher, Monson)
(Senators Robinson, Tallackson, Urlacher)

WHEAT TAX LEVY USE

AN ACT to amend and reenact section 4-28-07 of the North Dakota Century Code, relating to uses for the wheat tax levy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-28-07 of the North Dakota Century Code is amended and reenacted as follows:

4-28-07. Wheat tax levy.

1. a. A tax of ten mills per bushel [35.24 liters] by weight must be levied and imposed upon all wheat grown in this state, delivered into this state, or sold through commercial channels to a first purchaser in this state.
- b. The tax must be levied and assessed at the time of sale and deducted by the purchaser from the price paid, or in the case of a lien, pledge, or mortgage, deducted from the proceeds of the loan or claim secured, subject to adjustment at the time of settlement in the event the number of bushels [liters] is not accurately determined at the time of the lien, pledge, or mortgage.
- c. At the time of sale, the first purchaser in this state shall issue and deliver to the producer or seller a record of the transaction in the manner prescribed by the commission.
2. a. Any producer who sells wheat to a first purchaser in this state and who is subject to the deduction provided in this chapter, within sixty days following the deduction or final settlement, may make application by personal letter to the wheat commission for a refund application blank.
- b. Upon the return of the blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer must be refunded the net amount of the deduction collected.
- c. If no request for refund has been made within the period prescribed above, then the producer is presumed to have agreed to the deduction. However, a producer, for any reason, having paid the tax more than once on the same wheat, upon furnishing proof of this to the commission, is entitled to a refund of the overpayment.
3. The commission, to inform the producer, shall develop and disseminate information and instructions relating to the purpose of the wheat tax and

manner in which refunds may be claimed and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of wheat.

4. The commission may use the amount raised by two mills of the ~~ten-mill~~ levy provided for in this section to support the commission's involvement in trade issues throughout the world.
5. The commission may use the amount raised by up to two mills of the levy provided for in this section for the purposes of providing market maintenance and development services, utilization research, transportation research, and education; addressing domestic policy issues; and engaging in other related activities; or for the purposes of contracting for market maintenance and development services, utilization research, transportation research, and education; addressing domestic policy issues; and engaging in other related activities, with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers.
6. When the wheat commission presents the report required by section 4-24-10, the commission shall present a separate report detailing the nature and extent of the commission's efforts to address domestic policy issues.

Approved April 21, 2003

Filed April 21, 2003

CHAPTER 60**HOUSE BILL NO. 1129**

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

MILK ASSESSMENTS AND DAIRY REGULATIONS

AN ACT to amend and reenact sections 4-27-06, 4-30-36, 4-30-36.2, and 4-30-36.4 of the North Dakota Century Code, relating to milk assessments and dairy regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-27-06 of the North Dakota Century Code is amended and reenacted as follows:

4-27-06. Assessment - Appropriation.

1. There is hereby levied on each producer an assessment of ten cents per hundredweight [45.36 kilograms] on all milk or some product therefrom produced and sold by that producer.
2. All assessments levied under this chapter must be collected by the first dealer or processor through deduction of the same from the gross receipts, with the exception that where the producer sells directly to the consumer, the assessment must be collected from the producer. All moneys received by the dealers, processors, and producers from the assessment must be remitted to the state treasurer and deposited by him in the North Dakota dairy promotion commission fund and are hereby appropriated to the commission and must be disbursed by the commission in accordance with the provisions of this chapter. The remittance of such assessments must be made monthly ~~within fifteen days after the period for which remittance is made~~ not later than the last day of the month following the month in which the milk was marketed. Assessments unpaid on the date on which they are due and payable ~~must~~ may be increased by ~~ten~~ one and one-half percent of the amount of the assessment.
3. Any producer desiring a refund of such assessment shall himself make written application to the secretary-treasurer of the commission therefor. Such application must be made to the secretary-treasurer upon forms provided by the commission no later than thirty days from the time of any payment made to a producer. Upon request, refunds must be made by the secretary-treasurer on a monthly basis.

SECTION 2. 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, ~~1999 Recommendations of the United States Public Health Service~~

2001 Revision, Public Health Service, Food and Drug Administration, Publication No. 229" including "Grade "A" Condensed and Dry Milk Ordinance 1995 Revision, Grade A Condensed and Dry Milk Products and Condensed and Dry Whey Supplement 1" and all supplements added thereto except that the minimum requirements for solids-not-fat in all grade A milk is eight and one-half percent and the butterfat content of grade A whole milk is three and one-fourth percent. The 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 3. AMENDMENT. Section 4-30-36.2 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines. The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk ~~Supplies - 1999 revision corrected~~ Shippers - 2001 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines recommended in the sixteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association.

SECTION 4. 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 ~~of 1999~~, 2001 Revision, Public Health Service, Food and Drug Administration, Publication No. 229" and its supplements and follow the ~~procedures~~ 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 ~~1999 revisions~~, 2001 Revision".

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 61

HOUSE BILL NO. 1420

(Representatives Belter, Onstad)

(Senators Christmann, Nichols)

CATTLE TRANSACTION RECORDS AND BEEF COMMISSION

AN ACT to create and enact two new sections to chapter 4-34 of the North Dakota Century Code, relating to records of cattle transactions; to amend and reenact sections 4-34-02, 4-34-03, 4-34-04, 4-34-05, 4-34-06, 4-34-08, and 4-34-10 of the North Dakota Century Code, relating to the North Dakota beef commission; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-34 of the North Dakota Century Code is created and enacted as follows:

Cattle purchasers - List of sellers to commission - Certain records exempt from disclosure - Penalty.

1. The commission may adopt rules requiring the purchaser of cattle subject to assessment under this chapter to furnish the commission with the names of persons from whom the cattle were purchased. Any person who knowingly refuses to furnish the commission with required information is guilty of a class B misdemeanor.
2. Except as otherwise provided by law, the following records are not subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota:
 - a. Records furnished to the commission pursuant to subsection 1;
 - b. Records furnished pursuant to section 2 of this Act; and
 - c. The identity of a person requesting refund of an assessment under section 4-34-11, and the amount of the person's requested refund.
3. This section does not limit the issuance of general statements based upon the reports of persons subject to this chapter, or the publication by the commission of the name of any person violating this chapter and a statement of the manner of violation by that person.

SECTION 2. A new section to chapter 4-34 of the North Dakota Century Code is created and enacted as follows:

Records of cattle transactions - Inspection by commission.

1. Each selling agency, livestock auction market, livestock dealer, and any other person subject to assessment under this chapter shall keep a record of:

- a. The number of cattle purchased, initially transferred, or otherwise subject to assessment, and the date of such transaction;
 - b. The identification of the seller of cattle;
 - c. The number of cattle imported or the equivalent of beef or beef products;
 - d. The amount of assessment remitted;
 - e. The basis, if necessary, to show why the remittance is less than the number of head of cattle multiplied by the per head assessment; and
 - f. The date any assessment was paid.
2. Each person subject to this section shall maintain and make available for inspection by the commission or its agents the records required by this section, including records necessary to verify any required reports. The records must be maintained for the period of time that the commission may prescribe by rule, but the records must be maintained for at least three years.

SECTION 3. AMENDMENT. Section 4-34-02 of the North Dakota Century Code is amended and reenacted as follows:

4-34-02. Definitions. Unless the context otherwise requires:

1. "Beef producer" means any person or firm engaged in the production of cattle.
2. "Cattle" means live domesticated bovine animals regardless of age.
3. "Cattle feeder" means any person or firm engaged in the growing of cattle or finishing of cattle for slaughter.
4. "Commission" means the North Dakota beef commission.
5. "Dairy producer" means any person or firm engaged in the production and sale of milk from cows.
6. "Livestock auction markets" has the same definition as contained in subsection 2 of section 36-05-01.
7. "Livestock dealer" has the same definition as contained in section 36-04-01.
8. "Participating producer" means a person who has not claimed a refund for the payment of assessment on the sale of cattle under this chapter for the preceding three years.
9. "Person" includes individuals, corporations, limited liability companies, partnerships, trusts, associations, cooperatives, and any and all other business units.

- 9- 10. "Selling agency" means any person engaged in the business of buying or selling in commerce livestock on a commission basis.

SECTION 4. AMENDMENT. Section 4-34-03 of the North Dakota Century Code is amended and reenacted as follows:

4-34-03. North Dakota beef commission - Appointments - Vacancies - Qualifications.

1. There is hereby created a North Dakota beef commission consisting of nine members who must be appointed by the governor. The commission must be composed of three beef producers, one cattle feeder, one dairy producer, one public livestock market representative, and three representatives at large. The Subject to section 4-34-05, the commission may also appoint up to two nonvoting ex officio members.
2. Three initial members must be appointed for one year; three members must be appointed for two years; and three members must be appointed for three years. All subsequent members must be appointed for three years unless the appointment is to fill a vacancy in which case such appointment must be for the unexpired term. No members may serve more than two successive three-year terms. In the event a position on the commission becomes vacant for any reason, the unexpired term of such position must be filled in the same mode and manner as the original appointments. In addition to those causes enumerated under section 44-02-01, a position on the commission is deemed vacant if a member fails to attend, without justification, three consecutive meetings of the commission.
3. Each member must:
 - a. Be a United States citizen and a resident of this state;
 - b. Be actually engaged in that phase of the cattle industry the member represents;
 - c. Have been actually engaged in that phase of the cattle industry for a period of five years; ~~and~~
 - d. Have during that period derived a substantial portion of the member's income therefrom; and
 - e. Except for the public livestock market representative, be a participating producer.

SECTION 5. AMENDMENT. Section 4-34-04 of the North Dakota Century Code is amended and reenacted as follows:

4-34-04. Nomination of members. With the exception of the representatives at large, who must be of the governor's ~~own~~ choosing, the voting members of the commission must be appointed by the governor from nominations made to him by the following organizations: to represent beef producers, by the North Dakota stockmen's association; to represent cattle feeders, by the North Dakota cattle feeders council; to represent dairy producers, by the North Dakota state milk producers association; and to represent public livestock markets, by the North Dakota livestock marketing association.

Not less than two nominations must be submitted for each office to be filled. Upon the expiration of the initial appointments, only those organizations which have the authorization to nominate candidates representing the specific classification for which an opening or openings exist are eligible to submit nominations. The initial appointments must be made immediately after the effective date of this chapter.

SECTION 6. AMENDMENT. Section 4-34-05 of the North Dakota Century Code is amended and reenacted as follows:

4-34-05. Powers and duties of commission.

1. The commission shall administer and enforce the provisions of this chapter and do all things reasonably necessary to effectuate the purposes of this chapter.
2. The commission shall elect a ~~chairman~~ presiding officer and such other officers as it ~~deems~~ determines advisable.
3. The commission shall employ and discharge at its discretion such personnel, including agents, as the commission determines are necessary to carry out the purposes of this chapter, and to prescribe their duties and powers and to fix their compensation.
4. The commission is empowered to adopt, ~~rescind, and amend~~ reasonable rules, regulations, and orders for the exercise of its powers ~~hereunder~~. The provisions of chapter 28-32 ~~shall~~ apply to this chapter.
5. The commission is authorized to establish by resolution a headquarters centrally located within the state of North Dakota which shall continue until so changed by the commission.
6. The commission may require that the person or persons who receive and disburse the moneys of the commission must be bonded, by and in the amount to be determined by the commission. The premium for such bond or bonds must be paid by the commission from assessments collected.
7. The commission shall deposit its funds in a special account in the state treasury.
8. The commission may incur expenses and enter into contracts and create such liabilities as may be reasonably necessary for the enforcement of this chapter.
9. The commission may borrow money, not in excess of its estimate of revenue from the current year's assessments.
10. The commission shall keep or cause to be kept accurate records of all assessments, expenditures, moneys, and other financial transactions performed pursuant to this chapter. Such records, books, and accounts must be audited by the state auditor, in accordance with established auditing and accounting procedures.
11. The commission may prosecute in the name of the state any action to enforce collection or assure payment of the assessment authorized by this chapter, and sue and be sued as a commission without individual

liability for acts of the commission within the scope and powers conferred upon it by this chapter.

12. The commission is empowered to cooperate with any person or any local, state, or national commission, organization, or agency, whether voluntary or established by state or federal law, including recognized livestock groups, engaged in activities similar to the work of the commission and to make contracts and agreements for carrying out programs consistent with the purpose and intent of this chapter and to expend funds in connection with this chapter.
13. The commission may appoint up to two nonvoting ~~ex officio~~ members for a term of one year that may be extended on an annual basis and the commission shall adopt policies to further define ~~ex officio~~ nonvoting member eligibility and term limitations.
14. The commission may accept grants, donations of funds, property, and services, or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the work and objectives of the commission, and shall deposit all funds received under this subsection in the North Dakota beef commission fund in the state treasury.
15. The commission may contract with similar entities and qualified beef councils in other states.

SECTION 7. AMENDMENT. Section 4-34-06 of the North Dakota Century Code is amended and reenacted as follows:

4-34-06. Meetings. ~~The commission shall hold an annual meeting at which time an annual report and proposed budget must be presented.~~ The commission shall hold at least ~~two~~ other three regular meetings each year at the call of the ~~chair~~ presiding officer, and may hold special meetings at the call of the presiding officer or by request of any three voting members of the commission. ~~The chairman~~ presiding officer shall establish the time, manner, and place of all meetings and shall give reasonable notice to the members. A majority of voting members constitutes a quorum for the transaction of any business.

SECTION 8. AMENDMENT. Section 4-34-08 of the North Dakota Century Code is amended and reenacted as follows:

4-34-08. Assessment for sale of cattle - Penalty.

1. There is ~~hereby~~ levied on each ~~person who is~~ a resident of this state selling cattle within the state or from the state, an assessment of fifty cents per head for each animal sold, or the amount assessed pursuant to the federal Beef Promotion and Research Act of 1985 [7 U.S.C. 2901 et seq.] and applicable regulations, whichever is greater. The moneys collected pursuant to this chapter must be paid to the commission pursuant to this chapter and must be expended by the commission only as authorized by this chapter.
2. For the purposes of this chapter, a person is not considered to have sold cattle ~~if the~~ and the assessment may not apply to cattle owned by a person if that person certifies to the commission, on forms provided by the commission, that:

- a. The person's only share in the proceeds of a sale of cattle is a sales commission, handling fee, or other service fee, ~~or the~~; or
 - b. The person acquired ownership of cattle to facilitate the transfer of ownership of the cattle from the seller to a third party, resold the cattle no later than ten days from the date on which the person acquired ownership, and ~~certified, as required by regulations prescribed by the cattlemen's beef promotion and research board and approved by the secretary of agriculture of the United States, that the requirements of 7 CFR 1260.116 have been satisfied. The moneys collected pursuant to this chapter must be paid to the commission pursuant to this chapter and must be expended by the commission only as authorized by this chapter~~ that the assessment levied upon the person from who the person purchased cattle, if an assessment was due, has been collected and has been remitted, or will be remitted in a timely fashion.
3. Any person seeking nonproducer status under this section who willfully provides a false or misleading certification to the commission is guilty of a class B misdemeanor.

SECTION 9. AMENDMENT. Section 4-34-10 of the North Dakota Century Code is amended and reenacted as follows:

4-34-10. Remittance of assessments collected - Penalties. All assessments collected by licensed dealers, selling agencies at terminal markets, or auction markets, or required to be paid by any other person as provided in this chapter must be remitted to the North Dakota beef commission no later than the fifteenth day of the month following the month in which the cattle were sold. The assessments must be accompanied by remittance forms as prescribed and furnished by the commission. All moneys collected by the commission pursuant to this chapter must be remitted by the commission to the state treasurer and deposited by the state treasurer in the North Dakota beef commission fund and are hereby appropriated to the commission and must be disbursed by the commission in accordance with this chapter. Any licensed dealer, selling agency at terminal markets, auction markets, or any other person required to remit assessments but who fails to remit the assessments as required by this chapter within thirty days following the month in which the cattle were sold is guilty of a class B misdemeanor. Any licensed dealer, owner or operator of a selling agency at a terminal market, livestock auction market operator or any other person required to collect assessments but who fails to collect assessments as required by this chapter is guilty of a class B misdemeanor. Any person who sells cattle from the state of North Dakota outside the state or to an out-of-state buyer who fails to remit the assessments required by this chapter within thirty days following the month in which the cattle were sold is guilty of a class B misdemeanor. Any unpaid assessments due pursuant to this chapter ~~must~~ may be increased by two percent each month beginning with the day following the date the assessments were due. Any remaining amount due which includes any unpaid charges previously due pursuant to this section, ~~must~~ may be increased at the same rate on the corresponding day of each month thereafter until paid. The timeliness of the remittance of an assessment as required by this chapter must be based on the applicable postmark date or the date the assessment is actually received by the commission. The commission ~~is authorized to~~ may sue for and collect assessments and any penalties on unpaid assessments.

CHAPTER 62

SENATE BILL NO. 2082

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

PESTICIDE APPLICATORS, USE, AND FEES

AN ACT to amend and reenact subsections 5, 6, 11, 28, and 29 of section 4-35-05, sections 4-35-09, 4-35-16, 4-35-17, and 4-35-18, and subsection 4 of section 4-35-23 of the North Dakota Century Code, relating to the North Dakota pesticide act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 5, 6, 11, 28, and 29 of section 4-35-05 of the North Dakota Century Code are amended and reenacted as follows:

5. "Certified applicator" means any individual who is certified under this chapter ~~The term includes a commercial applicator and a private applicator as authorized to use or supervise the use of any pesticide that is classified for restricted use.~~
6. "Commercial applicator" means ~~a certified applicator who uses any pesticide, for any purpose or on any property, other than as provided for by a private applicator~~ 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.
11. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in this state.
28. "Public ~~operator~~ applicator" means a certified applicator who applies ~~restricted use~~ pesticides as an employee of a state or federal agency, municipal corporation, public utility, or other governmental agency.
29. "Restricted use pesticide" means any pesticide formulation which is classified for restricted use by the ~~board~~ 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.

SECTION 2. AMENDMENT. Section 4-35-09 of the North Dakota Century Code is amended and reenacted as follows:

4-35-09. Commercial and public applicator's certification.

1. A commercial or public applicator may not purchase ~~or~~ use, or supervise the use of a pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.

2. An individual may be certified as a commercial or public applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications for which the applicant has applied, after examination as the board requires, and the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall issue a commercial applicator's certificate limited to the classifications in which the applicant is qualified.
4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification. Individuals certified pursuant to this section are deemed certified commercial or public applicators for the use of pesticides.

SECTION 3. AMENDMENT. Section 4-35-16 of the North Dakota Century Code is amended and reenacted as follows:

4-35-16. Commercial and public applicators to keep records - Duration - Submission to commissioner. The board shall require the holders of certificates to maintain records of sales of restricted use and special exemption pesticides and all ~~commercial~~ applications of pesticides by commercial or public applicators. The board may also require restricted use pesticide application records of private applicators. Such relevant information as the board may deem necessary may be specified by rule. The records must be kept for a period of three years from the date of the application or sale of the ~~restricted use~~ pesticide to which the records refer. Upon request, these records or pertinent parts thereof, must be submitted to the commissioner.

SECTION 4. AMENDMENT. Section 4-35-17 of the North Dakota Century Code is amended and reenacted as follows:

4-35-17. License plates for equipment. The board may require all motor vehicles, as defined in chapter 39-01, which are used for the application of restricted use pesticides to be identified by a license plate or decal furnished by the board. Such license plate or decal must be issued at no cost to the certified applicator or public applicator, and must be affixed to the vehicle as prescribed by the board. This section must not be interpreted to apply to aircraft engaged in aerial spraying which are licensed under section 2-05-18.

SECTION 5. AMENDMENT. Section 4-35-18 of the North Dakota Century Code is amended and reenacted as follows:

4-35-18. Reciprocal agreement. The North Dakota state university extension service, or its designee, may issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to use restricted use pesticides under a plan substantially similar to this chapter and after the applicant has paid a fee, set by the board, not greater than the fee or charge authorized under sections 4-35-09, 4-35-12, or 4-35-14 if the applicant would have taken the appropriate

examination. Such a certification may be suspended or revoked in the same manner and on the same grounds as certifications pursuant to this chapter, and must be suspended or revoked if the nonresident's home state certification is suspended or revoked.

SECTION 6. AMENDMENT. Subsection 4 of section 4-35-23 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~In addition to the criminal sanctions which may be imposed pursuant to subsections 4 and 2, a person found guilty of violating~~ A person who violates a provision of this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the commissioner of agriculture through an administrative hearing 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.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 63

HOUSE BILL NO. 1066

(Representatives Nicholas, Aarsvold)

(Senators Nichols, Klein)

(At the request of the Agriculture Commissioner)

PESTICIDE AND CONTAINER DISPOSAL PROGRAM

AN ACT to provide for the continuation of an agricultural pesticide and pesticide container disposal program; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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, 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. Project scope and evaluation - Proposed legislation. The project described in section 1 of this Act must occur in areas to be determined by the agriculture commissioner in consultation with the advisory board under subsection 2 of section 1 of this Act. Before December 12, 2004, the commissioner shall determine whether the project implemented and continued under section 1 of this Act should be continued. If the commissioner determines that the project should be continued or expanded, the commissioner shall introduce appropriate legislation in the fifty-ninth legislative assembly.

SECTION 3. 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. EXPIRATION DATE. This Act is effective through July 31, 2005, and after that date is ineffective.

Approved April 7, 2003
Filed April 7, 2003

CHAPTER 64

SENATE BILL NO. 2385

(Senators Taylor, Fairfield, Klein)
(Representatives DeKrey, Gulleson, Kerzman)

ORGANIC FOOD STANDARDS

AN ACT to create and enact two new sections to chapter 4-38 of the North Dakota Century Code, relating to organic food standards; to amend and reenact section 4-38-02 of the North Dakota Century Code, relating to certifying agents; to repeal sections 4-38-01, 4-38-03, 4-38-04, 4-38-05, and 4-38-06 of the North Dakota Century Code, relating to organic food standards; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-38-02 of the North Dakota Century Code is amended and reenacted as follows:

4-38-02. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Certifying agent" means a person or persons registered with the North Dakota agriculture commissioner who have demonstrated to the North Dakota agriculture commissioner that they have the staff and expertise to carry out the requirements of certification as outlined in this chapter accredited by the United States department of agriculture as an organic certifying agent under 7 CFR part 205.
2. "Organic food" means any food product, including meat, dairy, or a beverage, that is marketed or sold using the term or a derivative of the term organic food in the labeling or advertising of the product.
3. "Pesticides" means synthetic herbicides, insecticides, and fungicides, and all other toxic materials. The term does not include material from naturally derived substances.
4. "Synthetic fertilizer" means all nitrogen sources derived from ammonia; phosphorus derived from the acid treatment of rock phosphates; refined or highly soluble potassium salts, whether manufactured or mined; and all other chemically refined, synthesized, or acid treated material.
5. "Vendor" means any person who sells organic food to a consumer or another vendor, or who processes, manufactures, or otherwise transforms an organic food on behalf of a seller of organic food.
6. "Verification" means a system maintained by the vendor of organic foods that demonstrates compliance to standards under which product identity may be traced from farm to consumer, using a series of documents that record information about the vendor's production and processing techniques, including records documenting inspection visits by a certifying agent, records documenting inventory, and records

~~documenting adherence to standards.~~ "Commissioner" means the agriculture commissioner.

SECTION 2. A new section to chapter 4-38 of the North Dakota Century Code is created and enacted as follows:

Certifying agent - Registration. Before a person may act as a certifying agent in this state, the person must register with the commissioner on a form prescribed by the commissioner. The form must include:

1. The name of the certifying agent;
2. The name of all partners if the certifying agent is a partnership and all officers if the certifying agent is a corporation;
3. A copy of the certifying agent's program requirements;
4. A copy of all documents relating to the certifying agent's certification process;
5. A copy of the certifying agent's letter of authorization or certificate of accreditation issued by the national organic program; and
6. Any other information requested by the commissioner.

SECTION 3. A new section to chapter 4-38 of the North Dakota Century Code is created and enacted as follows:

Penalty. A person that violates this chapter is guilty of a class B misdemeanor.

SECTION 4. REPEAL. Sections 4-38-01, 4-38-03, 4-38-04, 4-38-05, and 4-38-06 of the North Dakota Century Code are repealed.

Approved April 11, 2003
Filed April 14, 2003

ALCOHOLIC BEVERAGES

CHAPTER 65

HOUSE BILL NO. 1437

(Representatives Boe, Froelich)
(Senator Bercier)

ALCOHOL RETAIL LICENSING AUTHORITY

AN ACT to amend and reenact sections 5-01-01, 5-02-01, 5-02-01.1, 5-02-05.1, and 5-02-10 of the North Dakota Century Code, relating to retail licenses to sell alcoholic beverages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-01 of the North Dakota Century Code is amended and reenacted as follows:

5-01-01. Definitions. In this title:

1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.
2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
3. "Beer" means any malt beverage containing one-half of one percent or more of alcohol by volume.
4. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
5. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
6. "Liquor" means any alcoholic beverage except beer.
7. "Local governing body" means the governing entity of a city, county, or federally recognized Indian tribe in this state.
8. "Local license" means a city, county, or tribal retail alcoholic beverage license issued by the appropriate local governing body.
9. "Microbrew pub" means a brewer that brews ten thousand or fewer barrels of beer per year and sells beer produced or manufactured on the premises for consumption on or off the premises, or serves beer

produced or manufactured on the premises for purposes of sampling the beer.

- 8- 10. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.
- 9- 11. "Sparkling wine" means wine made effervescent with carbon dioxide.
12. "Tribal licensee" means a person issued a local license by the governing body of a federally recognized Indian tribe in this state for the retail sale of alcoholic beverages within the exterior tribal reservation boundaries.
- 40- 13. "Wine" means the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.

SECTION 2. AMENDMENT. Section 5-02-01 of the North Dakota Century Code is amended and reenacted as follows:

5-02-01. State and local retail license required - Exception. Except as otherwise provided in section 5-02-01.1, any person engaging in the sale of alcoholic beverages at retail without first securing an appropriate license from the attorney general and a local license from the governing body of any city, or ~~board of county commissioners~~ if said business is located outside the corporate limits of a city, the board of county commissioners or the governing body of an Indian tribe, as the location requires, is guilty of a class A misdemeanor. This section does not apply to public carriers engaged in interstate commerce.

SECTION 3. AMENDMENT. Section 5-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

5-02-01.1. Event permit authorized - Penalty.

1. The local governing body may by permit authorize a qualified alcoholic beverage licensee licensed under this chapter to engage in the sale of alcoholic beverages at events designated by the permit. For purposes of this section, "qualified alcoholic beverage licensee" means a licensee in a city that imposed a city lodging and restaurant tax on July 31, 1993, who paid such tax and who continues to pay any such tax imposed by the city or a licensee in a county ~~or,~~ a licensee in a city that did not impose a city lodging and restaurant tax on July 31, 1993, or a tribal licensee. A fee for the local permit may be set by ordinance or resolution at not more than twenty-five dollars. The permit may not be valid for a period greater than fourteen days, and may include Sundays. The local governing body may establish rules to regulate and restrict the operation of an event permit. Any person who dispenses, sells, or permits the consumption of alcoholic beverages in violation of this section or the conditions of a permit is guilty of a class B misdemeanor.
2. The local governing body may authorize persons under twenty-one years of age to remain in the area of the event, or a portion thereof, where beer, wine, or sparkling wine may be sold pursuant to the permit. However, this authorization must be subject to the following minimum conditions:

- a. The area where persons under twenty-one years of age may remain must be specifically set forth in the permit;
- b. Only employees of the qualified alcoholic beverage licensee who are at least twenty-one years of age may deliver and sell the beer, wine, or sparkling wine;
- c. Subject to section 5-02-06, the area where persons under twenty-one years of age may remain may not be the qualified alcoholic beverage licensee's fixed or permanent licensed premises as shown on the state and local governing body's alcoholic beverage license issued pursuant to section 5-02-01; and
- d. No person under twenty-one years of age within the area described in the permit may consume, possess, or receive alcoholic beverages.

SECTION 4. 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 ~~city or county~~ 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 ~~of the city or county~~. 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 ~~city or county~~ 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 ~~city or county~~ local governing body may permit dancing and the distribution of alcoholic beverages between the hours of twelve noon on Sunday and one a.m. on Monday. The general public may be permitted to participate in the consumption of alcoholic beverages distributed under the authority 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 5. AMENDMENT. Section 5-02-10 of the North Dakota Century Code is amended and reenacted as follows:

5-02-10. Hearing on alleged violations. Any person having information that a licensed retailer of alcoholic beverages has violated any provisions of this title may file with the attorney general, city attorney, or state's attorney an affidavit specifically setting forth such violation. Upon receipt of such affidavit, the city attorney or state's attorney shall set the matter for hearing not later than the next regular meeting of the local governing body or forward such affidavit to the attorney general. Upon receipt of any such affidavit the attorney general shall set the matter for hearing in the local county courthouse not less than ten days after copies of the affidavit and notice of hearing have been mailed to the licensee by registered mail. If the hearing is held by the local governing body, a copy of this affidavit and notice of hearing must be mailed the licensee by registered mail not less than five days before such hearing. A record of such hearings will be made by stenographic notes or the use of an electronic recording device.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 66**SENATE BILL NO. 2190**

(Senators Klein, Lyson)
(Representatives Clark, Severson)

MINORS IN ALCOHOL PREMISES

AN ACT to amend and reenact sections 5-01-08 and 5-02-06 of the North Dakota Century Code, relating to persons under twenty-one years of age and licensed premises where alcohol beverages are sold.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 5-01-08 of the North Dakota Century Code is amended and reenacted as follows:

5-01-08. Persons under twenty-one years of age prohibited from manufacturing, purchasing, consuming, or possessing alcoholic beverages or entering licensed premises - Penalty - Exceptions - Referrals to addiction facilities - Jurisdiction. Except as permitted in this section and section 5-02-06, ~~any a~~ a person under twenty-one years of age ~~manufacturing may not manufacture or attempting attempt~~ may not manufacture or attempt to manufacture alcoholic beverages, purchasing purchase or attempting attempt to purchase alcoholic beverages, ~~consuming consume or having have~~ recently consumed alcoholic beverages other than during a religious service, being be under the influence of alcoholic beverages, ~~or being be~~ in possession of alcoholic beverages, or furnishing furnish money to any person for ~~such the~~ the purchase; or entering of an alcoholic beverage, or enter any licensed premises where alcoholic beverages are being sold or displayed, except a restaurant when accompanied by a parent or legal guardian, or in accordance with section 5-02-06, or if the person is a law enforcement officer or other public official ~~entering who enters~~ the premises in the performance of official duty, or 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. A violation of this section is guilty of a class B misdemeanor. The court may, under this section, refer the person to an outpatient addiction facility licensed by the state department of human services for evaluation and appropriate counseling or treatment. The offense of consumption occurs in the county of consumption or the county where the offender is arrested.

SECTION 2. AMENDMENT. Section 5-02-06 of the North Dakota Century Code is amended and reenacted as follows:

5-02-06. Prohibitions as to persons under twenty-one years of age - Penalty - Exceptions. Except as permitted in this section, any licensee who dispenses alcoholic beverages to a person under twenty-one years of age, or who permits such a person 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. Any person under twenty-one years of age may remain in a restaurant where alcoholic beverages are being sold 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 is employed by the restaurant as a food waiter, food waitress, busboy, or busgirl under the direct supervision of a person twenty-one or more years of age and is not engaged in the sale, dispensing, delivery, or consumption of alcoholic beverages; ~~or if.~~ A person may enter and remain on the licensed premises if the person is a law enforcement officer or other public official entering who enters the premises in the performance of official duty; or if the person enters the licensed 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. Any person 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. Any person who is nineteen years of age or older but under twenty-one years of age may be employed by the restaurant to serve and collect money for alcoholic beverages, if the person is under the direct supervision of a person 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 from eighteen to twenty-one years of age to work in the capacity of musicians under the direct supervision of a person twenty-one or more years of age.

Approved April 24, 2003

Filed April 24, 2003

CHAPTER 67

HOUSE BILL NO. 1298

(Representatives Ruby, Dosch, Ekstrom, Kasper, Meier)
(Senator Tollefson)

DOMESTIC WINERY LICENSES

AN ACT to amend and reenact section 5-01-17 of the North Dakota Century Code, relating to domestic winery licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³² **SECTION 1. AMENDMENT.** Section 5-01-17 of the North Dakota Century Code is amended and reenacted as follows:

5-01-17. ~~Farm~~ Domestic winery license.

1. The state tax commissioner may issue a ~~farm~~ domestic winery license to the owner or operator of a ~~farm~~ winery located within this state to produce ~~table or sparkling wines wine~~. A farm winery must be operated by the owner of a North Dakota farm and produce table or sparkling wines from grapes, grape juice, other fruit bases, or honey with a majority of the ingredients by volume, excluding water, grown and produced in this state by the farm winery majority of the ingredients by volume, excluding water, of wine produced by a domestic winery, must be grown and produced in this state. Licenses Domestic wineries may be granted an exemption from the majority ingredient utilization requirement whenever the state tax commissioner determines, upon the commissioner's own motion or at the request of a domestic winery, that weather conditions, pest infestations, plant disease epidemics, or other natural causes have reduced the quantity or quality of produce grown in this state to an extent that renders compliance with the majority ingredient utilization requirement infeasible. The exemption is effective for one year unless the state tax commissioner issues a new exemption. A domestic winery may purchase, at wholesale or retail, brandy for use of on-premises fortification. A domestic winery license may be issued and renewed for an annual fee of ~~fifty~~ one hundred dollars, which is in lieu of all other license fees required by this title.
2. Before a domestic winery sells any wine, the licensee must register with the state tax commissioner, without a fee, the labels for each type or brand of wine produced. A license authorizes the sale domestic winery may sell, on the farm winery premises, of table or sparkling wines wine produced by that farm winery at on-sale or off-sale, in retail lots, and not for resale, in total quantities not in excess of one ten thousand gallons in a calendar year; glassware; wine literature and accessories; cheese, cheese spreads, and other snack food items; and the dispensing of. A

³² Section 5-01-17 was also amended by section 1 of Senate Bill No. 2159, chapter 524.

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. Labels for each type or brand produced must be registered with the state treasurer, without fee before sale. The state tax commissioner may issue special events permits for not more than five 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 farm domestic winery may not engage in any wholesaling activities. All sales and delivery 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 on-premises sale of alcoholic beverages at a restaurant owned by the licensee and located on property contiguous to the winery.

3. ~~The farm~~ A domestic winery shall pay to the state the wholesaler taxes and the sales taxes on all wines sold at retail by the farm winery licensee as set forth in sections 5-03-07 and 57-39.2-03.2.
4. ~~The farm~~ A domestic winery shall report quarterly or annually to the state tax commissioner the total quantity of wine 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.
5. Except as otherwise specified in this section, all provisions of this title govern the production, sale, possession, and consumption of ~~table or sparkling wines~~ wine produced by a farm domestic winery.

Approved April 14, 2003
Filed April 14, 2003

BANKS AND BANKING

CHAPTER 68

SENATE BILL NO. 2129

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

BANK DIVIDENDS AND SURPLUS FUNDS

AN ACT to amend and reenact section 6-03-34 of the North Dakota Century Code, relating to bank dividends and surplus funds; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-34 of the North Dakota Century Code is amended and reenacted as follows:

6-03-34. Surplus fund required - Dividends only out of earnings not required for surplus. The board of directors of any association organized under this title may declare and pay ~~annual, semiannual, or quarterly~~ dividends out of the net profits of the association subject to the limitations of this chapter. Every such association, ~~quarterly, semiannually, or annually,~~ as its board of directors deems advisable, shall ascertain, set apart, and convert into a surplus fund at least fifty percent of its net earnings until such surplus fund equals one hundred percent of its common stock, and no dividend may be declared upon its stock except from the remaining fifty percent of its net earnings.

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

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 69**HOUSE BILL NO. 1270**
(Representatives Nottestad, Hanson)
(Senator Wardner)**CREDIT UNION CREDIT COMMITTEE REPORTS**

AN ACT to amend and reenact section 6-06-14 of the North Dakota Century Code, relating to reports of credit committees of credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-14 of the North Dakota Century Code is amended and reenacted as follows:

6-06-14. Loans - How made - Security - Meetings and duties of credit committee - Preferential loans. The credit committee has general supervision over all loans to members, and shall meet as often as may be necessary to perform its duties and at least once each month, except the foregoing provisions regarding monthly meetings do not apply to the North Dakota central credit union. Notice must be given to each member of the committee before any meeting is held. All applications for a loan must be made on a form approved by the committee and must set forth the purpose for which the loan is desired, the security, if any, which is offered, and such other data as the committee may require. The maximum aggregate loans that may be made to a member or a group of members relying on a single income source without adequate security is two thousand five hundred dollars or one percent of the credit union's total share and deposit accounts, whichever is the higher, but not to exceed fifty thousand dollars. Security under this section includes an assignment of shares or deposits, an endorsement made on the note by a responsible person, and such other security as the committee in its discretion may deem adequate. No loan may be made unless it is approved by a majority of the entire committee; except that the credit committee may appoint and delegate to one or more loan officers the power to approve loans up to the limit established by the credit committee, or in excess of such the limit if such the excess is fully secured by unpledged shares. ~~Each loan officer shall furnish to the credit committee a record of each loan approved or not approved by the loan officer within seven days of the date of the filing of the application therefor. All loans not approved by a loan officer must be acted upon by the credit committee. No An individual shall have authority to may~~ not disburse funds of the credit union for any loan ~~which that~~ has been approved by that individual in that individual's capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer. Every loan by a credit union to its directors, officers, managers, and committee members must be made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and must be in strict conformity with the credit union's rules and regulations.

Approved March 20, 2003
Filed March 20, 2003

CHAPTER 70**SENATE BILL NO. 2183**

(Senators Nelson, Klein)
(Representatives Delzer, Eckre)

CREDIT UNION RESERVE FUND DISTRIBUTION

AN ACT to amend and reenact section 6-06-21 of the North Dakota Century Code, relating to maintaining a reserve fund for state-chartered credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-21 of the North Dakota Century Code is amended and reenacted as follows:

6-06-21. Reserve fund. Every credit union, including corporate central credit unions, shall maintain a reserve fund in accordance with the rules of the national credit union administration to be used as a reserve against bad loans and other losses. This fund may not be distributed except upon ~~liquidation~~ prior approval of the state credit union board.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 71

HOUSE BILL NO. 1355

(Representative Clark)
(Senator Espegard)

ESCROW ACCOUNT STATEMENTS

AN ACT to amend and reenact sections 6-03-13.6, 6-08-29, 7-02-15, and 47-10.2-05 of the North Dakota Century Code, relating to notice of mortgagee payment of interest on escrow account funds and statutory reference correction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³³ **SECTION 1. AMENDMENT.** Section 6-03-13.6 of the North Dakota Century Code is amended and reenacted as follows:

6-03-13.6. Branch conversions. Notwithstanding section 6-03-13.1, any bank organized under chapter 6-02, any national bank doing business in this state, or a any bank established in this state by a any bank holding company doing business in this state as of January 1, 1995, may convert a branch of a federal savings and loan association located in this state which was in existence as of March 1, 1995, purchased by the bank between January 1, 1995, and August 1, 1996, into a facility of the bank to be maintained at the same branch location if the acquisition and conversion does not violate the deposit limitations provisions contained in sections ~~6-08-29~~ 6-08-30 and 6-08.3-03.1 and the acquisition and conversion of the branch is approved by the appropriate regulatory agencies.

SECTION 2. AMENDMENT. Section 6-08-29 of the North Dakota Century Code is amended and reenacted as follows:

6-08-29. Interest on banking institution and credit union Annual escrow accounts related to mortgages on residences - Rate payable account statement. Before the mortgage is executed by the mortgagor, ~~each~~ Each banking institution and credit union ~~intending to maintain that~~ maintains an escrow account for the payment of taxes, assessments, insurance premiums, and other charges upon the mortgagor's residence shall ~~notify the mortgagor whether the institution or credit union offers interest on the escrow account funds.~~ Each banking institution and credit union that maintains an escrow account shall annually furnish annually each mortgagor with a detailed statement showing all debits and credits to the escrow account ~~and the method used in computing the interest, if interest is offered.~~

SECTION 3. AMENDMENT. Section 7-02-15 of the North Dakota Century Code is amended and reenacted as follows:

7-02-15. Interest on savings and loan association Annual escrow accounts related to mortgages on residences - Rate payable account statement. Before the mortgage is executed by the mortgagor, every Each savings

³³ Section 6-03-13.6 was also amended by section 2 of Senate Bill No. 2046, chapter 48.

and loan association ~~intending to maintain that~~ maintains an escrow account for the payment of taxes, assessments, insurance premiums, and other charges upon the mortgagor's residence shall ~~notify the mortgagor whether the association offers interest on the escrow account funds.~~ Each savings and loan association that maintains an escrow account shall annually furnish annually each mortgagor with a detailed statement showing all debits and credits to the escrow account ~~and the method used in computing the interest, if interest is offered.~~

SECTION 4. AMENDMENT. Section 47-10.2-05 of the North Dakota Century Code is amended and reenacted as follows:

47-10.2-05. Interest on other Annual escrow accounts related to mortgages on residences - Rate payable account statement. Before the mortgage is executed by the mortgagor, every ~~Every~~ residential mortgagee, including any insurance company ~~whose with~~ articles of incorporation ~~are~~ filed under section 26.1-01-03 or ~~who~~ which is required to obtain a certificate of authority under section 26.1-01-05, ~~intending to maintain an escrow account for the payment of taxes, assessments, insurance premiums, and other charges upon the mortgagor's residence shall notify the mortgagor whether it offers interest on the escrow account funds.~~ The mortgagee shall annually furnish annually each mortgagor with a detailed statement showing all debits and credits to the account ~~and the method used in computing the interest, if interest is offered.~~

Approved March 20, 2003
Filed March 20, 2003

CHAPTER 72**SENATE BILL NO. 2191**

(Senator Espegard)
(Representatives N. Johnson, Uglen)

**FINANCIAL INSTITUTION CUSTOMER
IDENTIFICATION**

AN ACT to create and enact a new section to chapter 6-08 of the North Dakota Century Code, relating to retention of a copy of a customer's state-issued identification by a financial institution trust company or credit union.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-08 of the North Dakota Century Code is created and enacted as follows:

Documenting customer identity. Notwithstanding any other provision of law, a financial institution, trust company, or credit union may make and retain a copy of any motor vehicle operator's license, permit, or nondriver's photo identification card used in connection with the process of verifying the identity of a customer or potential customer.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 73

HOUSE BILL NO. 1478

(Representatives Kasper, Keiser, Ruby, Tieman)
(Senators Mutch, Tollefson)

FINANCIAL INFORMATION PRIVACY

AN ACT to create and enact two new sections to chapter 6-08.1 of the North Dakota Century Code, relating to disclosure of financial information; and to amend and reenact sections 6-08.1-01 and 6-08.1-02 of the North Dakota Century Code, relating to financial institution customer privacy definitions and exceptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

6-08.1-01. Definitions. As used in this chapter:

1. "Customer" means any person ~~who~~ that is a resident of or is domiciled in this state and which has transacted or is transacting business with; or has used or is using the services of; a financial institution, or for ~~whom~~ which a financial institution has acted as a fiduciary with respect to trust property.
2. "Customer information" means either of the following:
 - a. Any original or any copy of any records held by a financial institution pertaining to a customer's relationship with the financial institution.
 - b. Any information derived from a record described in this subsection.
3. "Financial institution" means any organization that is physically located in the state which is authorized to do business under state or federal laws relating to financial institutions, including, without limitation, a bank, including the Bank of North Dakota, a savings bank, a trust company, a savings and loan association, or a credit union.
4. "Financial institution regulatory agency" means any of the following:
 - a. The federal deposit insurance corporation.
 - b. The federal savings and loan insurance corporation.
 - c. The national credit union administration.
 - d. The federal reserve board.
 - e. The United States comptroller of the currency.
 - f. The department of financial institutions.

- g. The federal home loan bank board.
5. "Governmental agency" means any agency or department of this state, or any authorized officer, employee, or agent of an agency or department of this state.
 6. "Law enforcement agency" means any agency or department of this state or of any political subdivision of this state authorized by law to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
 7. ~~"Person" means any individual, partnership, corporation, limited liability company, association, trust, or other legal entity.~~

³⁴ **SECTION 2. AMENDMENT.** Section 6-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

6-08.1-02. Exemptions. This chapter does not apply to any of the following:

1. The disclosure of necessary customer information in the preparation, examination, handling, or maintenance of any customer information by any officer, employee, or agent of a financial institution having custody of such information or in the examination of such necessary information by an accountant engaged by the financial institution to perform an audit.
2. The disclosure of necessary customer information in the examination of any customer information by, or the furnishing of customer information to, any officer, employee, or agent of a financial institution regulatory agency solely for use in the exercise of that person's duties.
3. The publication of data derived from customer information ~~where~~ if the data cannot be identified to any particular customer or account.
4. Any acts required of the financial institution by the Internal Revenue Code.
5. Disclosures permitted under the Uniform Commercial Code concerning the dishonor of any negotiable instrument.
6. The exchange in the regular course of business of necessary customer credit information between a financial institution and other financial institutions or commercial entities, directly, or through a customer reporting agency.
7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, of either of the following:
 - a. The name of any person who, either directly or indirectly, has obtained financing through the Bank of North Dakota.

³⁴ Section 6-08.1-02 was also amended by section 1 of House Bill No. 1104, chapter 74.

- b. The amount of any financing obtained either directly or indirectly through the Bank of North Dakota.
8. ~~A~~ The disclosure of customer information in the examination, handling, or maintenance of any customer information by any governmental agency or law enforcement agency for purposes of verifying information necessary in the licensing process, provided prior consent is obtained from the licensee and customer.
9. Disclosure of customer information to a law enforcement agency or governmental agency pursuant to a search warrant or subpoena duces tecum issued in accordance with applicable statutes or the North Dakota Rules of Criminal Procedure.
10. Disclosure by a financial institution to the agriculture commissioner that it has given a customer notice of the availability of the North Dakota agricultural mediation service.
11. The disclosure by a financial institution to any financial institution or other entity that controls, is controlled by, or is under common control with the financial institution if the financial institution or other entity receiving the information complies with section 6-08.1-03.
12. A disclosure of customer information under section 502(e) of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1436; 15 U.S.C. 6802(e)]. A disclosure under this subsection must comply with the rules adopted under section 4 of this Act.

SECTION 3. A new section to chapter 6-08.1 of the North Dakota Century Code is created and enacted as follows:

Joint marketing agreements - Consent. A financial institution must have a customer's consent before the financial institution may disclose the customer's information to a nonaffiliated third party under a joint marketing agreement as provided under section 502(b)(2) of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802(b)(2)].

SECTION 4. A new section to chapter 6-08.1 of the North Dakota Century Code is created and enacted as follows:

Rules. The state banking board and the state credit union board shall adopt rules to implement subsection 12 of section 6-08.1-02. The rules must provide at least as much customer protection as would be provided in the case of disclosure of information under circumstances where there has been an opt-out election under title V of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1436].

Approved April 7, 2003
Filed April 7, 2003

CHAPTER 74**HOUSE BILL NO. 1104**

(Industry, Business and Labor Committee)
(At the request of the Industrial Commission)

**BANK OF NORTH DAKOTA INFORMATION
CONFIDENTIALITY**

AN ACT to amend and reenact subsection 7 of section 6-08.1-02 of the North Dakota Century Code, relating to confidentiality of information in the Bank of North Dakota's possession.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁵ **SECTION 1. AMENDMENT.** Subsection 7 of section 6-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, ~~of either~~ of the following:
 - a. The name of any person who, ~~either directly or indirectly~~, has obtained approval for direct or indirect financing or security, including a loan guarantee or a letter of credit, through the Bank of North Dakota primarily for purposes other than personal, family, or household purposes.
 - b. The amount of any financing ~~obtained either directly or indirectly through the Bank of North Dakota~~ or security referenced in subdivision a.
 - c. The amount of any net writeoff or loan forgiveness associated with the financing or security referenced in subdivision a which the industrial commission determines is uncollectible.

Approved March 7, 2003
Filed March 7, 2003

³⁵ Section 6-08.1-02 was also amended by section 2 of House Bill No. 1478, chapter 73.

CHAPTER 75

SENATE BILL NO. 2267

(Senators Trenbeath, Espegard)
(Representatives Dosch, Tieman)

INTERSTATE BANKING

AN ACT to create and enact a new subsection to section 6-08.4-01 and a new section to chapter 6-08.4 of the North Dakota Century Code, relating to banking definitions and branch restrictions; and to amend and reenact sections 6-08.4-02, 6-08.4-03, 6-08.4-05, and 6-08.4-06 of the North Dakota Century Code, relating to approval by federal regulatory authorities, authority of a bank to branch interstate, notice and filing requirements, and powers of banks operating through interstate branches.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-08.4-01 of the North Dakota Century Code is created and enacted as follows:

"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. A new section to chapter 6-08.4 of the North Dakota Century Code is created and enacted as follows:

Reciprocity required. To the extent a state imposes a restriction on the ability of a North Dakota bank to establish, acquire, or retain a branch in that state, that restriction must apply to the establishment, acquisition, or retention of a branch in this state by the out-of-state bank.

SECTION 3. AMENDMENT. Section 6-08.4-02 of the North Dakota Century Code is amended and reenacted as follows:

6-08.4-02. Interstate mergers branches. ~~Effective May 31, 1997~~ Subject to section 6-08.4-06, the responsible federal regulatory authority may approve a ~~merger~~ transaction under the Federal Deposit Insurance Act [Pub. L. 81-967; 64 Stat. 87; 12 U.S.C. 1811 et seq.] ~~between a North Dakota bank and an out-of-state bank.~~

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 by merger. Notwithstanding section 6-08.4-02, ~~effective May 31, 1997~~, a North Dakota state-chartered bank, with approval of the board, may establish, ~~maintain~~ acquire, retain, and operate one or more branches in a state other than this state ~~pursuant to an interstate merger in which the North Dakota state-chartered bank is the resulting bank.~~ An application must be filed with the 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 board may approve the ~~interstate merger~~ transaction if the board finds that:

1. The proposed ~~interstate merger~~ transaction will not be detrimental to the safety and soundness of the ~~resulting~~ North Dakota state-chartered bank;
2. Any new officers and directors are qualified, and possess appropriate experience and financial responsibility ~~to direct and manage the resulting North Dakota state-chartered bank~~; and
3. The proposed ~~merger~~ transaction is consistent with the convenience and needs of the communities to be served by the ~~resulting~~ bank in this state and is otherwise in the public interest.

SECTION 5. AMENDMENT. Section 6-08.4-05 of the North Dakota Century Code is amended and reenacted as follows:

6-08.4-05. Notice and filing requirements. Any out-of-state bank that ~~will be the resulting bank pursuant to an interstate merger involving a North Dakota bank~~ proposes a transaction for a branch in this state must notify and submit a copy of its ~~interstate merger~~ transaction application to the board ~~of the proposed merger~~ not later than the date on which it files the application with the responsible federal regulatory authority.

SECTION 6. 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 ~~maintains~~ 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.

Approved March 21, 2003
Filed March 21, 2003

CHAPTER 76

HOUSE BILL NO. 1116

(Industry, Business and Labor Committee)
(At the request of the Bank of North Dakota)

TRUST PREFERRED SECURITIES TRANSACTIONS

AN ACT to create and enact a new subdivision to subsection 1 of section 6-09-15 of the North Dakota Century Code, relating to trust preferred securities transactions; to amend and reenact subsection 1 of section 6-09-15 of the North Dakota Century Code, relating to authority of the Bank of North Dakota to guarantee loans; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁶ **SECTION 1. AMENDMENT.** Subsection 1 of section 6-09-15 of the North Dakota Century Code is amended and reenacted as follows:

1. Make, purchase, guarantee, or hold loans:
 - a. To state or federally chartered lending agencies or institutions, or any other financial institutions.
 - b. To holders of Bank of North Dakota certificates of deposit and savings accounts up to ninety percent of the value of the certificates and savings accounts offered as security.
 - c. To actual farmers who are residents of this state, if the loans are secured by recorded mortgages giving the Bank of North Dakota a first lien on real estate in North Dakota in amounts not to exceed eighty percent of the value of the security.
 - d. That are insured or guaranteed in whole or in part by the United States, its agencies, or instrumentalities.
 - e. That are eligible to be guaranteed under chapter 15-62.1. Loans made pursuant to this subdivision may provide for interest that 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.
 - f. To individuals or bank holding companies for the purpose of purchasing or refinancing the purchase of bank stock of a bank located in the state.
 - g. To nonprofit organizations that are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C.

³⁶ Section 6-09-15 was also amended by section 2 of House Bill No. 1116, chapter 76, and section 1 of Senate Bill No. 2335, chapter 77.

501(c)(3)], the proceeds of the loans to be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the parks and recreation department.

- h. Under Public Law No. 99-198 [99 Stat. 1534; 7 U.S.C. 1932 et seq.], as amended through December 31, 1996, to nonprofit corporations for the purpose of relending loan funds to rural businesses.
- i. Under title 7, Code of Federal Regulations, part 1948, subpart C; part 1951, subparts F and R; and part 1955, subparts A, B, and C, as amended through December 31, 1996, to finance businesses and community development projects in rural areas.
- j. Obtained as security pledged for or originated in the restructuring of any other loan properly originated or participated in by the Bank.
- k. To instrumentalities of this state.
- l. As otherwise provided by this chapter or other statutes.
- m. If the Bank is participating in the loan and the Bank deems it is in the best interests of the Bank to do so, it may purchase the remaining portion of the loan from a participating lender that is closed by regulatory action, or from the receiver of the participating lender's assets.

³⁷ **SECTION 2.** A new subdivision to subsection 1 of section 6-09-15 of the North Dakota Century Code is created and enacted as follows:

To an investment company created for completing a trust preferred securities transaction for the benefit of a financial institution located in this state.

SECTION 3. EXPIRATION DATE. Section 1 of this Act is effective through July 31, 2007, and after that date is ineffective.

Approved April 21, 2003
Filed April 21, 2003

³⁷ Section 6-09-15 was also amended by section 1 of Senate Bill No. 2335, chapter 77, and section 1 of House Bill No. 1116, chapter 76.

CHAPTER 77

SENATE BILL NO. 2335

(Senators Grindberg, Espegard, Holmberg)

VENTURE CAPITAL INVESTMENTS

AN ACT to create and enact a new subdivision to subsection 4 of section 6-09-15, a new section to chapter 6-09, and a new subsection to section 10-30.5-04 of the North Dakota Century Code, relating to powers of the Bank of North Dakota and powers of the North Dakota development fund, incorporated; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁸ **SECTION 1.** A new subdivision to subsection 4 of section 6-09-15 of the North Dakota Century Code is created and enacted as follows:

In North Dakota alternative and venture capital investments and early-stage capital funds including the North Dakota development fund, incorporated, not to exceed five million dollars, for the purpose of providing funds for investment in North Dakota alternative and venture capital investments and early-stage capital funds.

SECTION 2. A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

Reimbursement of Bank losses. The Bank of North Dakota shall request from the industrial commission a transfer from the student loan trust fund to reimburse the Bank for any losses incurred from investments in North Dakota alternative and venture capital investments and early-stage capital funds including the North Dakota development fund, incorporated. Any gains from investments in North Dakota alternative and venture capital investments and early-stage capital funds, including the North Dakota development fund, incorporated, must first be applied to offset any losses reimbursed by the student loan trust fund under this section. Once the student loan trust fund has been made whole, the Bank of North Dakota and the trust fund shall share any additional revenue on a mutually agreed formula as determined by the industrial commission.

SECTION 3. A new subsection to section 10-30.5-04 of the North Dakota Century Code is created and enacted as follows:

Borrow funds not to exceed five million dollars from the Bank of North Dakota for the purpose of investing in North Dakota alternative and venture capital investments and early-stage capital funds.

³⁸ Section 6-09-15 was also amended by section 2 of House Bill No. 1116, chapter 76, and section 1 of House Bill No. 1116, chapter 76.

SECTION 4. EXPIRATION DATE. Sections 1 and 3 of this Act are effective through July 31, 2007, and after that date are ineffective.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 78

HOUSE BILL NO. 1118

(Agriculture Committee)

(At the request of the Bank of North Dakota)

BEGINNING FARMERS AND AG PACE FUND TRANSFERS

AN ACT to amend and reenact section 6-09-15.5 of the North Dakota Century Code, relating to the transfer of funds between the beginning farmers loan fund and the agriculture partnership in assisting community expansion fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-15.5 of the North Dakota Century Code is amended and reenacted as follows:

6-09-15.5. Bank loans to beginning farmers - Revolving loan fund - Requirements.

1. A revolving loan fund must be maintained in the Bank of North Dakota for the purpose of making or participating in loans to North Dakota beginning farmers for the purchase of agricultural real estate, equipment, and livestock. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest on loans made from the fund are appropriated for the purpose of providing loans and to supplement the interest rate on loans to beginning farmers made by the Bank of North Dakota under subdivision c of subsection 1 of section 6-09-15 and in accordance with this section.
2. The revolving loan fund and loans made from the fund must be administered and supervised by the Bank of North Dakota. The Bank may deduct a service fee for administering the fund from interest payments received on loans. An application for a loan from the fund must be made to the Bank and, upon approval, a loan must be made from the fund in accordance with this section.
3. A loan made from the fund may not exceed eighty percent of the appraised value of the agricultural collateral, with the actual percentage to be determined by the Bank. The Bank may do all things and acts and may establish additional terms and conditions necessary to make a loan under this section. A loan made from the fund must have a first security interest.
4. A loan made from the fund must have the interest rate fixed at one percent below the Bank's then current base rate for the first five years with a maximum rate of six percent per year and variable at one percent below the Bank's then current base rate for the second five years. During the second five years, the variable rate must be adjusted annually on the anniversary date. The rate during the remaining term of the loan floats at the Bank's base rate as in effect from time to time.

5. The maximum term of a real estate loan is twenty-five years. The maximum term of a farm equipment or livestock loan is seven years.
6. The industrial commission shall contract with a certified public accounting firm to audit the fund as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the fund, must be paid for by the fund.
7. The Bank shall adopt policies to implement this section.
8. Notwithstanding any other provision of law, the Bank may transfer any unobligated funds between funds that have been appropriated by the legislative assembly for interest buydown in the beginning farmers loan fund and the agriculture partnership in assisting community expansion fund.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 79**SENATE BILL NO. 2360**

(Senator Nething)
(Representative Timm)

TRUCKDRIVER TRAINING STUDENT LOANS

AN ACT to create and enact a new section to chapter 6-09 of the North Dakota Century Code, relating to a loan program to assist students in truckdriver training programs; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

Truckdriver training programs - Loans to students.

1. The Bank of North Dakota shall administer a loan program to assist residents of this state during the period in which the residents are enrolled as students in a truckdriver training program offered in this state. The maximum amount allowable per loan is seven thousand five hundred dollars, less any amount received by the student in the form of employer matching grants, financial aid, third-party training program dollars, income, unemployment insurance benefits, or workers' compensation benefits, during the period of the truckdriver training program.
2. The Bank of North Dakota shall provide a schedule for repayment of any loan provided under subsection 1. The schedule must require that the student begin repayment no later than sixty days after completion of or withdrawal from the truckdriver training program and that the loan be repaid in full within sixty months of the first payment.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 2007, and after that date is ineffective.

Approved April 11, 2003

Filed April 14, 2003

CHAPTER 80**HOUSE BILL NO. 1321**

(Representatives Koppelman, Belter, Nelson, Nicholas)
(Senators G. Lee, Taylor)

AGRICULTURAL REAL ESTATE LOAN GUARANTEES

AN ACT to create and enact a new section to chapter 6-09.7 of the North Dakota Century Code, relating to Bank of North Dakota agricultural real estate loan guarantees; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-09.7 of the North Dakota Century Code is created and enacted as follows:

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 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.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2007, and after that date is ineffective.

Approved April 9, 2003
Filed April 9, 2003

CONTRACTS AND OBLIGATIONS

CHAPTER 81

SENATE BILL NO. 2157

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

UNIFORM ATHLETE AGENTS ACT

AN ACT to adopt the Uniform Athlete Agents Act, relating to the regulation of athlete agents; to repeal chapter 9-15 of the North Dakota Century Code, relating to the regulation of athlete agents; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional sports services contract or an endorsement contract.
2. "Athlete agent" means an individual who enters an agency contract with a student-athlete or recruits or solicits a student-athlete to enter an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.
3. "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate.
4. "Contact" means a communication between an athlete agent and a student-athlete to recruit or solicit the student-athlete to enter an agency contract.
5. "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance.
6. "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics.

7. "Professional sports services contract" means an agreement under which an individual is employed or agrees to render services as a player on a professional sports team, with a professional sports organization, or as a professional athlete.
8. "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.
9. "Registration" means registration as an athlete agent under this Act.
10. "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

SECTION 2. Service of process - Subpoenas. By acting as an athlete agent in this state, a nonresident individual appoints the secretary of state as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state. The secretary of state may issue subpoenas for any material that is relevant to the administration of this Act.

SECTION 3. Athlete agents - Registration required - Void contracts.

1. Except as otherwise provided in subsection 2, an individual may not act as an athlete agent without holding a certificate of registration.
2. Before being issued a certificate of registration, an individual may act as an athlete agent for all purposes except signing an agency contract, if a student-athlete or another person acting on behalf of the student-athlete initiates communication with the individual and within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent.
3. An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

SECTION 4. Registration as athlete agent.

1. An applicant for registration shall submit an application for registration to the secretary of state in a form prescribed by the secretary of state. The application must be in the name of an individual and, except as otherwise provided in subsection 2, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:
 - a. The name of the applicant and the address of the applicant's principal place of business.
 - b. The name of the applicant's business or employer, if applicable.
 - c. Any business or occupation engaged in by the applicant for the five years proceeding the date of submission of the application.

- d. A description of the applicant's formal training as an athlete agent, practical experience as an athlete agent, and educational background relating to the applicant's activities as an athlete agent.
 - e. The names and addresses of three individuals not related to the applicant who are willing to serve as references.
 - f. The name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the five years preceding the date of submission of the application.
 - g. The names and addresses of all persons who are:
 - (1) With respect to the athlete agent's business if it is not a corporation, the name of the organization, the partners, members, officers, managers, associates, or profit-sharers of the business; and
 - (2) With respect to a corporation employing the athlete agent, the name of the organization, the officers, directors, and any shareholder of the corporation having an interest of five percent or greater.
 - h. Whether the applicant or any person named under subdivision g has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime.
 - i. Whether there has been any administrative or judicial determination that the applicant or any person named under subdivision g has made a false, misleading, deceptive, or fraudulent representation.
 - j. Any instance in which the conduct of the applicant or any person named under subdivision g resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution.
 - k. Any sanction, suspension, or disciplinary action taken against the applicant or any person named under subdivision g arising out of occupational or professional conduct.
 - l. Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named under subdivision g as an athlete agent in any state.
2. An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed under subsection 1. The secretary of state shall accept the application and the certificate from the other state as an application for registration if the application to the other state:

- a. Was submitted in the other state within six months preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;
- b. Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
- c. Was signed by the applicant under penalty of perjury.

SECTION 5. Certificate of registration - Issuance or denial - Renewal.

1. Except as otherwise provided in subsection 2, the secretary of state shall issue a certificate of registration to an individual who complies with subsection 1 of section 4 of this Act whose application has been accepted under subsection 2 of section 4 of this Act.
2. The secretary of state may refuse to issue a certificate of registration if the secretary of state determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary of state may consider whether the applicant has:
 - a. Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - b. Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;
 - c. Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - d. Engaged in conduct prohibited by section 13 of this Act;
 - e. Had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;
 - f. Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or
 - g. Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.
3. In making a determination under subsection 2, the secretary of state shall consider how recently the conduct occurred, the nature of the conduct and the context in which it occurred, and any other relevant conduct of the applicant.
4. An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the secretary of state. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.

5. An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed under subsection 4, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The secretary of state shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:
 - a. Was submitted in the other state within six months preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;
 - b. Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - c. Was signed by the applicant under penalty of perjury.
6. A certificate of registration or a renewal of a registration is valid for two years.

SECTION 6. Suspension, revocation, or refusal to renew registration.

The secretary of state may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration.

SECTION 7. Temporary registration. The secretary of state may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

SECTION 8. Registration and renewal fees. An application for registration or renewal of registration must be accompanied by a fee in the following amount:

1. Two hundred fifty dollars for an initial application for registration.
2. Two hundred fifty dollars for an application for registration based upon a certificate of registration or licensure issued by another state.
3. One hundred fifty dollars for an application for renewal of registration.
4. One hundred fifty dollars for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

SECTION 9. Required form of contract.

1. An agency contract must be in a record, signed or otherwise authenticated by the parties. An agency contract must state or contain:
 - a. The amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering the contract or for providing the services;

- b. The name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;
 - c. A description of any expenses the student-athlete agrees to reimburse;
 - d. A description of the services to be provided to the student-athlete;
 - e. The duration of the contract; and
 - f. The date of execution.
2. An agency contract must contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

- (1) **YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;**
 - (2) **IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTORS; AND**
 - (3) **YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.**
3. An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter the contract.
 4. The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

SECTION 10. Notice to educational institution.

1. Within seventy-two hours after entering an agency contract or before the next scheduled athletic event in which the student-athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student-athlete is enrolled or the athlete agent has reasonable grounds to believe the student-athlete intends to enroll.
2. Within seventy-two hours after entering an agency contract or before the next athletic event in which the student-athlete may participate, whichever occurs first, the student-athlete shall inform the athletic

director of the educational institution at which the student-athlete is enrolled that the student-athlete has entered an agency contract.

SECTION 11. Student-athlete's right to cancel. A student-athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed. A student-athlete may not waive the right to cancel an agency contract. If a student-athlete cancels an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

SECTION 12. Required records.

1. An athlete agent shall retain the following records for a period of five years:
 - a. The name and address of each individual represented by the athlete agent;
 - b. Any agency contract entered by the athlete agent; and
 - c. Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter an agency contract.
2. Records required by subsection 1 to be retained are open to inspection by the secretary of state during normal business hours.

SECTION 13. Prohibited conduct.

1. An athlete agent, with the intent to induce a student-athlete to enter an agency contract, may not:
 - a. Give any materially false or misleading information or make a materially false promise or representation;
 - b. Furnish anything of value to a student-athlete before the student-athlete enters the agency contract; or
 - c. Furnish anything of value to any individual other than the student-athlete or another registered athlete agent.
2. An athlete agent may not intentionally:
 - a. Initiate contact with a student-athlete unless registered under this Act;
 - b. Refuse or fail to retain or permit inspection of the records required to be retained by section 12 of this Act;
 - c. Fail to register when required by section 3 of this Act;
 - d. Provide materially false or misleading information in an application for registration or renewal of registration;
 - e. Predate or postdate an agency contract; or

- f. Fail to notify a student-athlete before the student-athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student-athlete ineligible to participate as a student-athlete in that sport.

SECTION 14. Penalty. An athlete agent who violates section 13 of this Act is guilty of a class A misdemeanor.

SECTION 15. Civil remedies.

1. An educational institution has a cause of action against an athlete agent or a former student-athlete for damages caused by a violation of this Act. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
2. Damages of an educational institution under subsection 1 including losses and expense incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of this Act or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.
3. A cause of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.
4. Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
5. This Act does not restrict rights, remedies, or defenses of any person under law or equity.

SECTION 16. Administrative penalty. The secretary of state may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars for a violation of this Act.

SECTION 17. REPEAL. Chapter 9-15 of the North Dakota Century Code is repealed.

Approved March 27, 2003
Filed March 28, 2003

CORPORATIONS

CHAPTER 82

SENATE BILL NO. 2084

(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

SECURITIES LAW REVISIONS

AN ACT to amend and reenact sections 10-04-02 and 10-04-03, subsections 3, 5, and 12 of section 10-04-05, section 10-04-06, subsection 3 of section 10-04-07, subsections 2 and 3 of section 10-04-07.1, sections 10-04-08 and 10-04-10, subsection 4 of section 10-04-10.3, subsection 1 of section 10-04-11, sections 10-04-14 and 10-04-16, subsection 1 of section 10-04-16.1, subsection 3 of section 10-04-17, and subsection 1 of section 10-04-18 of the North Dakota Century Code, relating to definitions under the Securities Act, the authority of the securities commissioner and the securities department, securities exemptions, exempt transactions, registration of securities, registration of dealers, agents, investment advisors and investment advisor representatives, post-registration requirements, consent to service of process, orders and injunctions, investigations by the securities department, rescission, and penalties; to repeal section 10-04-10.2 of the North Dakota Century Code, relating to eligibility to be registered under the Securities Act; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-04-02 of the North Dakota Century Code is amended and reenacted as follows:

10-04-02. Definitions. When used in this chapter, unless the context or subject matter otherwise requires:

1. "Agent" means any individual, other than a dealer, who represents a dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in effecting transactions in a covered security as described in section 18(b)(3) and 18(b)(4) of the Securities Act of 1933 or a dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the Securities Act of 1934.
2. "Commissioner" means the securities commissioner of this state.
3. "Dealer" means a person, other than an agent, engaged in the business of effecting transactions in securities issued by another person or by such person for the account of others or for the person's own account. The term does not include a bank or savings institution if its activities as a dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited

transactions; 3(a)(5)(B) and 3(a)(5)(C) of the Securities Act of 1934 or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Act of 1934.

4. "Department" means the state securities department.
5. "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.
- ~~5.~~ 6. "Federal covered security" means any security that is a covered security pursuant to section 18(b) of the Securities Act of 1933 or rules or regulations adopted under that Act.
- ~~6.~~ 7. "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:
 - a. An investment adviser representative.
 - b. A bank, savings institution, or trust company.
 - c. A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the person's profession.
 - d. A broker or dealer or its agent whose performance of these services is solely incidental to the conduct of business as a broker or dealer and who receives no special compensation for them.
 - e. A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.
 - f. A federal covered adviser.
 - g. A person who is exempted from the federal definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.
 - h. Such other persons not within the intent of this subsection as the commissioner may by rule or order designate.
- ~~7.~~ 8. "Investment adviser representative" means:

- a. With respect to an investment adviser, any partner, officer, director of an investment adviser, or a person occupying a similar status or performing similar functions, or other individual who is either employed by or associated with an investment adviser who is registered or required to be registered under this chapter who:
 - (1) Makes any recommendations or otherwise renders advice regarding securities directly to advisory clients;
 - (2) Manages the accounts or portfolios of clients;
 - (3) Determines which recommendations or advice regarding securities should be given;
 - (4) Solicits, offers, or negotiates for the sale of or sells investment advisory services; or
 - (5) Immediately supervises employees in the performance of any of the foregoing.
 - b. With respect to a federal covered adviser, any person who is an "investment adviser representative" who has a "place of business" in this state, as those terms are defined by the securities and exchange commission pursuant to section 203A of the Investment Advisers Act of 1940.
 - c. "Investment adviser representative" does not include clerical or ministerial personnel.
- ~~8.~~ 9. "Issuer" means every person who issues or proposes to issue any security, except that:
- a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, certificates of interest, or shares in an unincorporated investment trust, whether or not of the fixed, restricted management, or unit type, issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.
 - b. With respect to equipment trust certificates or like securities, issuer means the person by whom the equipment or property is or is to be used.
 - c. With respect to fractional interests in oil, gas, or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, which are created for the purpose of sale.
 - d. With respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical settlement contract that is not fractionalized or pooled means the person effecting the transactions with the investors in such contracts.

9. 10. "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, must be deemed an offer to sell the security to be acquired by subscription or conversion. The offer or grant of an option to purchase securities may not be deemed an offer to sell the securities to be purchased if:
- a. The offer or grant is an offer or grant limited to directors, officers, or employees of the issuer or a parent or subsidiary of the issuer;
 - b. No money or other tangible property is given for the option; and
 - c. The option, by its terms or by the terms of a supplemental agreement, is nontransferable except by will or the laws of descent and distribution.
40. 11. "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, or any other unincorporated organization.
44. 12. "Registered agent" means an agent registered under this chapter.
42. 13. "Registered dealer" means a dealer registered under this chapter.
43. 14. "Sale" or "sell" means every sale or other disposition of a security or interest in a security for value, and every contract to make any such sale or disposition. Any security given or delivered with, or as a bonus on account of any purchase of securities or any other thing, must be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.
44. ~~"Securities Act of 1933" means the Act of Congress known as the Securities Act of 1933, as now or hereafter amended.~~
15. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement contract or a fractionalized or pooled interest therein; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor when the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; foreign currency commodity contract, as used in chapter 51-23; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary

or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

16. "Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement contract" does not include:
 - 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;
 - b. The assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or
 - c. The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the insurance laws of this state.

SECTION 2. AMENDMENT. Section 10-04-03 of the North Dakota Century Code is amended and reenacted as follows:

10-04-03. Administration of chapter.

1. The state securities department is under the supervision of a chief officer designated as the securities commissioner. The securities commissioner must be appointed by the governor and confirmed by the senate and shall hold office for a term of four years, beginning on the first day of July following a national presidential election and continuing until a successor has been appointed, confirmed by the senate, and has qualified, unless removed as herein provided. If the senate is not in session, the governor may make an interim appointment, and the interim appointee shall hold office until the senate confirms or rejects the appointment. The commissioner must be skilled in securities and may not be an incumbent of any other public office in the state. The commissioner may not own or control any security required to be registered under this chapter and may not be an officer, director, or employee of any dealer, salesman, investment adviser, or investment adviser representative required to be registered under this chapter. The governor may remove from office any commissioner who fails to discharge faithfully the duties of office or who becomes disqualified under the provisions of this section.

It is the prime duty of the commissioner to administer the provisions of this chapter. The commissioner shall receive a salary within the amount appropriated for salaries by the legislative assembly. The commissioner shall use a seal with the words "securities commissioner, North Dakota" and such design as the commissioner may prescribe engraved thereon by which seal the commissioner may authenticate documents used in the administration of this chapter. The commissioner may employ such employees as are necessary for the administration of this chapter. In the absence or disability of the

commissioner, the deputy or designee of the commissioner shall administer the provisions of this chapter as acting commissioner.

2. The commissioner shall have authority to administer oaths in, and to prescribe forms for, all matters arising under this chapter. The commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary under this chapter, including rules and forms governing registration statements, applications and reports, and defining any terms, whether or not used in this chapter, if the definitions are consistent with this chapter. The commissioner shall cooperate with the administrators of the securities laws of other states and of the United States with a view toward achieving maximum uniformity in the interpretation of like provisions of the laws administered by them and in the forms which are required to be filed under such law.
3. In addition to their regular compensation, the commissioner and the commissioner's employees shall be paid travel expenses necessary and actually incurred in the performance of their duties.
4. A special fund is established in the state treasury and designated as the investor education and technology fund. The commissioner may deposit the following moneys into the investor education and technology fund:
 - a. Payments for tuition or other costs associated with educational services or materials provided by the department.
 - b. Grants or donations for the purpose of investor education received by the commissioner from any public or private source.
 - c. Civil penalties assessed by the commissioner under the Securities Act of 1951, if the commissioner finds that:
 - (1) The violations or alleged violations underlying the assessment of civil penalties involve repeat violations, involve numerous investors, or appear to have been perpetrated on a systematic basis; and
 - (2) The violations or alleged violations underlying the assessment of civil penalties could have been prevented or significantly curtailed had the individual investors involved in the matter been more knowledgeable about financial concepts in general, or about any specific laws, practices, or procedures relating to the securities industry.

The commissioner shall maintain and administer the investor education and technology fund. The moneys in the fund are appropriated to provide education services to the public relating to any of the financial services industries, including the securities industry, and to provide for the technology needs of the department, including the purchase or rental of equipment or software, servicing of the equipment or software, and training the commissioner's staff in the use of the equipment or software.

5. All fees, civil penalties, or other moneys collected under this chapter must be deposited in the general fund of the state treasury, except funds

permitted to be deposited into the investor education and technology fund under subsection 4 or civil penalties collected from enforcement actions for the purpose of distribution to aggrieved investors, which may be deposited in an the investor restitution fund; and all other civil penalties and moneys collected pursuant to an administrative action, court order or judgment, including investigation costs and attorney's fees in a securities action brought by the commissioner, must be deposited in the general fund. Funds in the investor restitution fund are appropriated to the securities commissioner on a continuing basis for distribution to aggrieved investors.

- 5- 6. The commissioner may honor requests from interested persons for the issuance of a statement or opinion concerning the applicability of this chapter or the rules adopted under this chapter to any transaction or proposed transaction which may be subject to this chapter. Any such request must be accompanied by a nonrefundable fee of one hundred fifty dollars.

SECTION 3. AMENDMENT. Subsections 3, 5, and 12 of section 10-04-05 of the North Dakota Century Code are amended and reenacted as follows:

3. Securities issued by a building and loan association subject to supervision by an agency of the state of North Dakota, or policy contracts, including variable ~~or fixed~~ annuity contracts, of an insurance company subject to supervision by an agency of the state of North Dakota.
5. Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, fraternal, charitable, social, or reformatory purposes; provided that prior to any offer of such security each person must meet the following conditions:
 - a. Apply for and obtain the written approval of the commissioner.
 - b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars, which document and fee must accompany the application.
 - c. File a notice identifying the basis of its qualification under this exemption with such additional information as the commissioner may require.
 - d. ~~Must not pay a commission or other remuneration, directly or indirectly, except to a dealer and agent registered in this state in connection with the offer or sale of the security to a resident of this state.~~
 - e. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.

The approval is effective for a period of one year from the date of approval. At least thirty days prior to the expiration date, there must be filed an application, offering disclosure document, and a nonrefundable fee of one hundred dollars for the renewal of the filing for additional periods of one year.

12. ~~Securities~~ Any security issued by a venture capital corporation or limited liability company organized under and operating in compliance with chapter 10-30.1; provided that prior to any offer of such security, the issuer must meet the following conditions:
- a. Apply for and obtain written approval by the commissioner.
 - b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars. The document and fee must accompany the application.
 - c. File such additional information as the commissioner requires by rule or order or may subsequently request.
 - d. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.
 - e. Not use public advertising matter or general solicitation, except tombstone advertisements approved by the commissioner, in connection with any offer or sale.
 - f. File a report of all offers and sales made in this state within thirty days after the completion of the offering.

The approval is effective for a period of one year from the date of approval. There must be filed, at least thirty days prior to the expiration date, an application, disclosure document, and a nonrefundable fee of one hundred dollars for the renewal of the filing for additional periods of one year.

³⁹ **SECTION 4. AMENDMENT.** Section 10-04-06 of the North Dakota Century Code is amended and reenacted as follows:

10-04-06. Exempt transactions. Except as hereinafter in this section expressly provided, sections 10-04-04, 10-04-07, 10-04-07.1, 10-04-08, 10-04-08.4, and 10-04-10 do not apply to any of the following transactions:

1. Any judicial, executor's, administrator's, guardian's, or conservator's sale or any sale by a receiver or trustee in insolvency or bankruptcy.
2. The sale in good faith and not for the purpose of avoiding the provisions of this chapter by a pledgee of securities pledged for a bona fide debt.
3. Any isolated sale of any security made by or on behalf of a bona fide owner for the owner's account, such owner not being an issuer, underwriter, dealer, or agent and such sale not being made in the course of repeated and successive transactions of a like character. This subsection shall not exempt any dealer or agent participating in an isolated sale from registering in accordance with section 10-04-10, nor shall this exemption be available in connection with any sale not made

³⁹ Section 10-04-06 was also amended by section 1 of House Bill No. 1276, chapter 83.

in good faith but rather for the purpose of evading the registration requirements imposed under chapter 10-04.

4. Securities dividends or other distributions by a corporation, limited partnership, limited liability limited partnership, or a limited liability company out of its earnings or surplus, or the sale or distribution of additional capital stock of a corporation, interest of a partnership, or membership interest of a limited liability company to or among its own stockholders, partners, or members, including persons who at the time of the transaction are holders of nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, when no commission or other remuneration is paid or given directly or indirectly for soliciting or effecting such sale or distribution to stockholders or members in this state.
5. Any offer or sale of securities to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or similar benefit plan, or other financial institution, or qualified institutional buyer, or to a dealer, or any government or political subdivision or instrumentality thereof, whether the purchaser is acting for itself or in a fiduciary capacity.
6. Any transaction incident to a vote by stockholders, partners, or members pursuant to the articles of incorporation, bylaws, partnership agreement, articles of organization, member-control agreement, or the applicable corporation, partnership, or limited liability company statute on a merger, consolidation, reclassification of securities, or sale of corporate, partnership, or limited liability company assets in consideration of the issuance of securities of another corporation, partnership, or limited liability company, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.
7. The issuance and delivery of any securities in exchange for any other securities of the same issuer pursuant to a right of conversion entitling the holder of the securities surrendered to make such conversion; provided, that the securities surrendered were not offered for sale or sold in violation of section 10-04-04.
8. The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that:
 - a. Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics.
 - b. Such securities do not constitute an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer, its officers, or directors or by or through an underwriter.

- c. A balance sheet of the issuer as of a date within eighteen months prior to the date of such sale and an income statement for either the fiscal year preceding that date or the most recent year of operations are contained in a securities manual.
 - d. Such securities are listed in Standard and Poor's, Mergent's industrial manual, Mergent's bank and finance manual, Mergent's transportation manual, Mergent's public utility manual, or Fitch's individual stock bulletin.
 - e. Such securities are limited to issuers organized under the laws of any state, territory, or insular possession of the United States.
 - f. Provided, however, that even though the foregoing conditions might all be met, the exemption would not apply to the securities of open-end management companies, mutual funds, unit investment trusts, contractual plans, and face amount certificate companies.
9. a. Any transaction pursuant to an offer directed by the offeror to not more than thirty-five persons, other than those designated in subsection 5, in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:
- (1) The seller reasonably believes that all the buyers in this state, other than those designated in subsection 5, are purchasing for investment.
 - (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state, other than those designated in subsection 5, except to a dealer and agent registered in this state in connection with the offer or sale of the security to a resident of this state.
 - (3) The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a nonrefundable filing fee of one hundred fifty dollars, which fee must accompany the application for approval.

The commissioner may, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the condition in paragraph 1.

- b. Any offer or sale in this state of common stock, preferred stock, limited liability company membership interests, or limited partnership interests of an issuer during any period of twelve consecutive months if all of the following conditions are met:
- (1) The issuer reasonably believes that all the buyers in this state, other than those designated in subsection 5, are purchasing for investment.
 - (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in

this state, other than those designated in subsection 5, except reasonable and customary commissions paid by the issuer to a dealer and agent registered in this state in connection with the offer or sale of the security to a resident of this state.

- (3) The issuer is both organized under the laws of this state and has its principal place of business in this state.
- (4) No public advertising matter or general solicitation, except tombstone advertisements approved by the commissioner, is used in connection with any offers or sales.
- (5) An offering disclosure document in the form approved by the commissioner must be delivered to each offeree ~~no less than seventy-two hours~~ prior to the sale of the security.
- (6) The gross proceeds of the offering may not exceed five million dollars.
- (7) The issuer must apply for and obtain the written approval of the commissioner prior to making any offer or sale in this state by filing an application prescribed by the commissioner, a copy of the offering disclosure document, and any other information or documents the commissioner may require, together with a nonrefundable filing fee of one hundred fifty dollars.
- (8) All funds raised in the offering are placed in an escrow account until the total offering amount has been sold.

The commissioner may withdraw or further condition this exemption or waive the conditions in paragraphs 5 and 6.

- c. The issuer must file a report of all offers and sales made in this state pursuant to subdivision a or b on a form prescribed by the commissioner within thirty days after the completion of the offering or expiration of the twelve-month approval period, whichever occurs first.
- d. The exemptions provided under subdivisions a and b may not be combined.
- e. An exemption under this subsection is not available for the securities of any issuer if the issuer or any promoter, officer, director, manager, partner, or underwriter of the issuer:
 - (1) Has filed a registration statement that is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the application required under this exemption.
 - (2) Has been convicted within five years prior to the filing of the application required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit,

including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

- (3) Is currently subject to any state administrative enforcement order or judgment entered by any state securities administrator or the securities and exchange commission within five years prior to the filing of the application required under this exemption or is subject to any federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts, was found and the order of judgment was entered within five years prior to the filing of the application required under this exemption.
 - (4) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.
 - (5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such part from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security or involving the making of any false filing with any state or with the securities and exchange commission entered within five years prior to the filing of the application required under this exemption.
 - (6) Has been or is the subject of any order issued by the United States postal service that was entered within five years prior to reliance on this exemption and alleged any fraudulent or unlawful conduct.
- f. Subdivision e does not apply if the commissioner determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption should not be denied.
10. The sale of capital stock of a corporation or membership interests of a limited liability company if the corporation or limited liability company is organized under the statutes of this state or the sale of memberships, including dues, in a nonprofit corporation incorporated in North Dakota if the corporation or limited liability company is organized and operated for the primary purpose of promoting community development.
 11. Any security issued in connection with an employees' stock purchase, savings, pension, profit-sharing, a self-employed person's retirement plan, or similar benefit plan.
 12. The sale of a security issued by the United States, or the state of North Dakota, or any political subdivision or instrumentality of the state of North Dakota; provided, that the offer for sale and sale are made by an official or employee of the issuer or of the Bank of North Dakota acting in an official capacity and not for personal pecuniary profit, or by a bank or similar financial association or institution or an official or employee

thereof solely as an accommodation to customers of such association or institution and without asking or receiving a commission or remuneration other than an accommodation fee not to exceed ~~fifty~~ one hundred dollars in connection with the transaction.

13. ~~The sale of capital stock or membership interests of a venture capital corporation or limited liability company organized under chapter 10-30.1.~~
44. Any offer or sale of shares of capital stock issued by a professional corporation or professional limited liability company which is organized and operated pursuant to chapter 10-31.
- ~~14.~~ 14. The offer or sale of a security issued by the North Dakota education association dues credit trust to members of the North Dakota education association.
- ~~15.~~ 15. a. An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus or similar disclosure document for the security if all of the following conditions are satisfied:
 - (1) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada; is engaged in or proposes to engage in a business other than petroleum exploration or production, mining, or other extractive industries; and is not a blind pool offering or other offering for which the specific business or properties cannot now be described.
 - (2) The issuer may solicit indications of interest in a project or business only within a period of twelve months after receiving approval from the commissioner and does not pay a commission or fee to any person for soliciting a potential investor or prospective purchaser in this state unless the person who receives the commission or fee is registered as a dealer or agent in this state.
 - (3) The issuer intends to register securities in this state, rely upon subsection 8 of section 10-04-05 for the issuance of a security, or receive approval for an exemption under subsection 5 of section 10-04-05 or subsection 9 of this section.
 - (4) The issuer files a solicitation of interest form and copies of any advertising or marketing materials, including scripts for use in telephone, television, electronic, or computer publications, for approval by the commissioner at least ten business days before the issuer begins soliciting indications of interest from potential purchasers and at least ten business days before publishing or distributing any materials or information to any person.
 - (5) The issuer obtains approval of the commissioner for any amendments or changes in filed forms, marketing materials,

or advertisements at least ten business days before distributing the amended marketing materials or amended advertising information to any person.

- (6) The issuer does not use any solicitation of interest form, script, advertisement, or other material which the issuer has been notified by the commissioner not to distribute, to solicit indications of interest.
- (7) Except for scripted broadcasts and published notices, the issuer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current solicitation of interest form at or before the time of the communication or within five days from the communication.
- (8) The issuer stops all communications with prospective investors made in reliance on this exemption immediately after filing an application to register or qualify the securities with the commissioner or with the securities and exchange commission.
- (9) The issuer does not accept money or sign completed contracts for sales of securities with any person while soliciting indications of interest and does not complete any sales of securities until at least ten business days after completing a securities registration or approval to offer and sell securities in this state.
- (10) The issuer does not make a sale until three days after delivery to the purchaser of a prospectus or similar disclosure document.
- (11) The issuer does not know, and in the exercise of reasonable care could not know, that the issuer or any officer, director, manager, ten percent shareholder, promoter, partner, or agent of the issuer:
 - (a) Has been the subject of or filed a registration statement that is the subject of a stop order, administrative enforcement order, judgment, injunction, or restraining order issued by any federal or state securities agency, any court of competent jurisdiction, or the United States postal service and which prohibits, denies, or revokes the registration or use of any exemption from registration in connection with the offer, sale, or purchase of a security, franchise, commodity, or other financial transaction or which involves fraud, deceit, misstatements of material facts, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or similar deceptive acts within five years prior to the filing of the solicitation of interest form; or
 - (b) Has been convicted of any felony or misdemeanor involving the offer, purchase, or sale of a security,

franchise, commodity, or financial transaction, or any felony or misdemeanor involving fraud, deceit, forgery, embezzlement, conspiracy to defraud, or a similar financial crime.

The prohibitions listed above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the dealer employing such party is licensed or registered in this state and the form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. A person disqualified under this subsection may not act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this section is automatically waived if the agency, which created the basis for disqualification, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

- b. The issuer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of section 10-04-04, but is a violation of this chapter, is actionable by the commissioner under section 10-04-16, and constitutes grounds for denying or revoking the exemption as to a specific security or transaction.
 - (1) Any published notice must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:
 - (a) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;
 - (b) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A PROSPECTUS OR SIMILAR DISCLOSURE DOCUMENT THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;
 - (c) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and
 - (d) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION AND IS REGISTERED OR APPROVED IN THIS STATE.
 - (2) Any script for broadcast must contain at least the identity of the chief executive of the issuer, a brief description of its

business and products, its address and telephone number, and the following legends:

- (a) THIS IS FOR AN INDICATION OF INTEREST ONLY AND INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND UPON A PROSPECTIVE INVESTOR;
- (b) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED; and
- (c) THIS OFFER IS MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER FEDERAL AND STATE SECURITIES LAWS.

- c. Offers made on reliance of this exemption will not result in a violation of section 10-04-04 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

~~47.~~ 16. An offer or sale of common stock, limited liability company membership interests, or limited partnership interests by a person to a person or other subscribers, not exceeding ten in number, for the sole purpose of organization in this state, if the securities are not acquired for the purpose of resale to others for a period of twelve months, advertising has not been published or circulated in connection with the offer or sale, and all sales are consummated within ten days after the date of organization.

~~48.~~ 17. Any offer or sale of a security by an issuer in a transaction provided all of the following conditions are met:

- a. Sales of securities may be made only to persons who are, or the issuer reasonably believes are, accredited investors as defined in 17 CFR 230.501(a) promulgated by the securities and exchange commission.
- b. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
- c. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to, or for, sale in connection with a distribution of the security. Any resale of a security sold in reliance of this exemption within twelve months of sale must be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under section 10-04-04 or to an accredited investor pursuant to an exemption available under subsection 5.
- d. (1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity

securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:

- (a) Within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the securities and exchange commission;
 - (b) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
 - (c) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
 - (d) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.
- (2) Paragraph 1 does not apply if:
- (a) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
 - (b) Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or
 - (c) The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subdivision.
- e. (1) A general announcement of the proposed offering may be made by any means.
- (2) The general announcement must include only the following information, unless additional information is specifically permitted by the commissioner:
- (a) The name, address, and telephone number of the issuer of the securities;

- (b) The name, a brief description, and price, if known, of any security to be issued;
 - (c) A brief description of the business of the issuer in twenty-five words or less;
 - (d) The type, number, and aggregate amount of securities being offered;
 - (e) The name, address, and telephone number of the person to contact for additional information; and
 - (f) A statement that:
 - [1] Sales will only be made to accredited investors;
 - [2] No money or other consideration is being solicited or will be accepted by way of this general announcement; and
 - [3] The securities have not been registered with or approved by any state securities agency or the securities and exchange commission and are being offered and sold pursuant to an exemption from registration.
- f. The issuer, in connection with an offer, may provide information in addition to the general announcement under subdivision e, if such information:
- (1) Is delivered through an electronic data base that is restricted to persons who have been prequalified as accredited investors; or
 - (2) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.
- g. Telephone solicitation is not permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.
- h. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption.
- i. The issuer shall file with the ~~commissioner~~ department a notice of transaction, a consent to service of process, a copy of the general announcement, and a nonrefundable filing fee of one hundred dollars within fifteen days after the first sale in this state.
- ~~49.~~ 18. The offer or sale of a security issued by an organization organized under and operated in compliance with chapter 10-06.1.
- ~~20.~~ 19. Any offer or sale of an agricultural-related cooperative security by or on behalf of an agricultural producer, as defined by section 32-44-01, to a person for the purpose of producing and selling agricultural products, as

defined by section 32-44-01, to the cooperative. Commissions or other remuneration may not be paid or given directly or indirectly for soliciting any prospective buyer in this state, except to a dealer or agent registered in this state, to an agent of a bank or a commercial trust department, to a licensed real estate agent, or to a licensed auctioneer if the sale is made at a bona fide public auction.

SECTION 5. AMENDMENT. Subsection 3 of section 10-04-07 of the North Dakota Century Code is amended and reenacted as follows:

3. Securities entitled to registration by description shall be registered by filing with the ~~commissioner~~ department by the issuer or by a registered dealer ~~of~~:
 - a. A registration statement in a form prescribed by the commissioner, signed by the person filing such statement and containing the following information:
 - (1) Name and address of person filing statement.
 - (2) Name and business address of issuer, and address of issuer's principal office in this state, if any.
 - (3) Title of securities being registered and total amount of securities to be offered.
 - (4) Amount of securities to be offered in this state, price at which securities are to be offered for sale to the public, and amount of registration fee, computed as hereinafter provided in subsection 5.
 - (5) A brief statement of the facts which show that the securities are entitled to be registered by description.
 - b. Payment of the required registration fee.
 - c. If the person who is registering the securities is not domiciled in this state and is not a corporation or limited liability company organized or authorized to transact business under the laws of this state, a consent to service of process conforming to the requirements of section 10-04-14. Such filing with the ~~commissioner, which may be made either by delivery in the office of the commissioner or by posting by registered or certified mail properly addressed to the commissioner,~~ department shall constitute the registration of securities by description and such registration shall become effective as of the time of such filing. Upon such registration by description, securities may be sold in this state by the registered dealer.

SECTION 6. AMENDMENT. Subsections 2 and 3 of section 10-04-07.1 of the North Dakota Century Code are amended and reenacted as follows:

2. Securities entitled to registration by announcement may be registered only by a dealer registered ~~in~~ with the office of the commissioner ~~department~~ as provided for in section 10-04-10 by filing ~~in~~ with the office

~~of the commissioner~~ department a written announcement of intention to trade in the securities containing the following:

- a. Name of issuer and location of the headquarters or principal office.
 - b. A brief description of the security, including price and current earnings.
 - c. A statement that the securities have been outstanding and in the hands of the public not less than one year as aforesaid.
 - d. A balance sheet not more than twelve months old.
 - e. A statement that the security has been registered in North Dakota or by the securities and exchange commission.
3. The filing of such announcement ~~in the office of~~ with the ~~commissioner~~ department constitutes the registration of the security, unless advised to the contrary within forty-eight hours or advised to furnish additional information, and such dealer shall pay to the commissioner a filing fee of twenty-five dollars. Upon registration, such securities may be sold in this state for a period of one year from date of registration by registered dealers at a price or prices reasonably related to the current market price of such security at the time of sale, subject, however, to any and all rights and authority granted the commissioner and to any person or purchaser under chapter 10-04, in respect of securities registered ~~in the office of~~ by the commissioner by description or qualification. No security registered under this section shall be sold directly or indirectly for the benefit of the issuer, or an underwriter of such securities, or for the promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter; provided, that no security, the registration of which has been revoked by the commissioner, or application for registration of which has been denied by the commissioner, or withdrawn by the applicant, shall be registered under this section.

SECTION 7. AMENDMENT. Section 10-04-08 of the North Dakota Century Code is amended and reenacted as follows:

10-04-08. Registration by qualification. Securities required to be registered by qualification under this chapter before they may be sold in this state must be registered as provided in this section. Application for registration of securities by qualification must be made by the issuer of the securities or by a registered dealer by filing ~~in~~ with the ~~office of the commissioner~~ department:

1. An application for registration, which must be made in writing or on forms prescribed by the commissioner ~~and which~~, must contain the following information and be accompanied by the following documents:
 - a. With respect to the applicant or issuer and any significant subsidiary: its name, address, and form of organization; the state of foreign jurisdiction and date of its organization; the general character and location of its business; a general description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

- b. With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: the person's name, address, and principal occupation for the past five years; the amount of securities of the issuer held by the person as of a specified date within thirty days of the filing of the application for registration; the amount of the securities covered by the application for registration to which the person has indicated an intention to subscribe; and a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected.
- c. With respect to persons covered by subdivision b: the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer to all those persons in the aggregate.
- d. With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision b other than the person's occupation.
- e. With respect to every promoter if the issuer was organized within the past three years: the information specified in subdivision b, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for any such payment.
- f. With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the application for registration; a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected; and a statement of the person's reasons for making the offering.
- g. The title, kind, classes, and amount of securities to be offered in this state; the proposed offering price to the public or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges and a statement as to what person, corporation, or limited liability company shall be responsible for payment of the same; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement

pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

- h. The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition.
- i. A description of each and every stock option or other security option outstanding, or to be created in connection with the offering, including the price at which such options may be exercised together with the amount of any such options held or to be held by every person.
- j. The capitalization and long-term debt of the issuer and any subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.
- k. The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the application for registration or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which affects its business or assets.
- l. A detailed statement showing the items of cash, property, services, patents, goodwill, and any other consideration for which any securities of the issuer have been within two years or are to be issued in payment.
- m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering.
- n. A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.
- o. A balance sheet of the issuer as of a date within four months prior to the filing of the application for registration; a profit and loss

statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if the business were the registrant.

- p. Other states in which it is proposed to offer the securities for sale to the public; other states in which the securities are eligible for sale to the public; states which have refused, by order or otherwise, to render the securities eligible for sale to the public or have revoked or suspended the right to sell the securities, or in which an application for registration has been withdrawn; and, if application has been made to register the securities under the federal Securities Act of 1933, the date upon which the application to register the securities was first filed, and a statement as to whether registration under that Act is effective, and if so, the effective date.
 - q. Such additional information as the commissioner requires by rule or order or may subsequently request.
2. Payment of a filing fee for each security or class of security to be registered as follows:
- a. One-tenth of one percent of the first seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.
 - b. One-twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.
 - c. In no event may such filing fee be less than one hundred dollars for each security or class of security to be registered. ~~If the application for filing is denied, such filing fee less the actual cost to the state of processing and investigating as determined by the commissioner must be returned to the applicant.~~
 - d. Provided, further, that any applicant may increase the aggregate amount of securities under this subdivision before the expiration of one year from the date of the certificate of effectiveness at the same reduced fee, which must be computed as provided in subdivisions a and b as a separate fee for each additional amount registered, as if the additional securities had been included in the other registration of that year, registration year and not calendar year.
 - e. For the renewal of the registration of securities for additional periods of one year, there must be paid a renewal fee of one hundred dollars.
3. If the applicant is not domiciled in this state and is not a corporation or limited liability company organized or authorized to transact business

under the laws of this state, a consent to service of process conforming to the requirements of section 10-04-14.

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

Registration under this section is effective for a period of one year.

SECTION 8. AMENDMENT. Section 10-04-10 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10. Registration of dealers, agents, investment advisers, and investment adviser representatives - Notice filings by federal covered advisers. A dealer or agent may not offer for sale or sell any securities within or from this state, except in transactions exempt under section 10-04-06, unless registered as a dealer or agent pursuant to the provisions of this section.

1. Dealers. Application for registration as a dealer may be made by any person eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed ~~in~~ with the office of the commissioner department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner may also require such additional information relating to the applicant and as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees as the commissioner deems necessary to establish whether or not the applicant should be registered as a dealer under the provisions of this law.

There must be filed with such application a written consent to the service of process upon the commissioner in actions against such dealer, conforming to the requirements of section 10-04-14.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as a dealer unless the commissioner finds that the applicant is not of good business reputation, or is not solvent, or the applicant's ~~designees~~ principals and compliance or sales supervisor do not appear qualified by training, examination, or experience to act on behalf of a dealer in securities.

Except as prohibited by the Securities Exchange Act of 1934, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the dealer and the dealer's agents with all the provisions of this law and for the faithful performance and payment of all obligations of the dealer and the dealer's agents.

The bond must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect purchasers. Any such bond must have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a dealer, the commissioner shall notify the applicant of such registration.

2. Agent. Application for registration as an agent may be made by any individual eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant and by the registered dealer or issuer employing or proposing to employ such applicant, duly verified by oath, must be filed ~~in~~ with the ~~office of the commissioner~~ department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner shall require as a condition of registration that the applicant pass a written examination as evidence of knowledge of the securities business; provided, that not more than two officers or managers of an issuer may be registered as an agent for a particular original offering of the issuer's securities without being required to pass such written examination; and provided, further, that no such officer or manager may again register within three years as such agent for this or any other issuer without passing the written examination.

The commissioner may also require such additional information as to the applicant's previous business experience as the commissioner deems necessary to determine whether or not the applicant should be registered as an agent under the provisions of this law. If an agent proposes to be self-employed, the agent shall specifically state the particular security or securities the agent proposes to sell in this state in the application, and if said security or securities are exempt under section 10-04-05 or 10-04-06, or have been registered by description under section 10-04-07, or have been registered by announcement under section 10-04-07.1, or have been registered by qualification under section 10-04-08, then the commissioner may require that said self-employed agent file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed agent with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond must be in a form approved and in the amount required by the commissioner.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an agent unless the commissioner finds that such applicant is not of good business reputation, or that the dealer named on the application is not a registered dealer. When the commissioner has registered an applicant as an agent, the commissioner shall immediately notify the dealer of such registration.

Every registered dealer or issuer shall promptly notify the ~~commissioner~~ department of the termination of the employment by the dealer or issuer of a registered agent.

3. Investment advisers.

a. It is unlawful for any person to transact business in this state as an investment adviser unless:

- (1) The person is registered under this chapter;
- (2) The person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered advisers, dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner; or
- (3) Such person is registered either under the laws of the state where its principal place of business is located or with the securities and exchange commission, if the investment adviser has no place of business in this state and during the preceding twelve-month period has had not more than six clients, other than those specified in paragraph 2, who are residents of this state.

b. Application for registration as an investment adviser may be made by any person eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed ~~in~~ with the ~~office of the commissioner~~ department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner may also require such additional information relating to the applicant and as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees, as the commissioner deems necessary to establish whether or not the applicant should be registered as an investment adviser under the provisions of this chapter.

Except as prohibited by the Investment Advisers Act of 1940, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the investment adviser and the investment adviser's representatives with all the provisions of this law and for the faithful performance and payment of all obligations of the investment adviser and the investment adviser's representatives. The bond must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect persons in this state. Any such bond must have as surety thereon a surety company authorized to do business in this state.

The commissioner may by rule or order provide for an examination to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make the person an investment adviser.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an investment adviser unless the commissioner finds that the applicant is not of good business reputation or is not solvent.

A registrant as investment adviser shall notify the ~~commissioner~~ department of any change of address.

4. Federal covered adviser. Except with respect to a federal covered adviser whose clients are those described in paragraph 2 of subdivision a of subsection 3 or who meets the criteria of paragraph 3 of subdivision a of subsection 3, it shall be unlawful for a person to transact business in this state as a federal covered adviser unless such person has made a notice filing with the ~~commissioner~~ department, in writing or electronically, consisting of a copy of those documents that have been filed with the securities and exchange commission as the commissioner may require by rule or otherwise and the prescribed notice filing fee.

A notice filing is effective from receipt until the following December thirty-first. It may be renewed by filing with the ~~commissioner~~ department, prior to expiration, those documents filed with the securities and exchange commission as the commissioner may require by rule or otherwise, with the notice filing renewal fee.

If the information contained in any document filed with the ~~commissioner~~ department is or becomes inaccurate or incomplete in any material respect, the federal covered adviser shall file an amendment with the ~~commissioner~~ department whenever such amendment is filed with the securities and exchange commission.

A notice filing may be terminated by a federal covered adviser by filing a notice of termination with the ~~commissioner~~ department.

5. Investment adviser representatives. Application for registration as an investment adviser representative may be made by any person eighteen years of age or older. The application for registration must be submitted in writing or electronically in a form prescribed by the commissioner, be

signed by the applicant and if applicable, by the investment adviser employing or proposing to employ the applicant, be duly verified by oath, be filed ~~in~~ with the office of the commissioner department, and contain information the commissioner determines to be necessary concerning the applicant.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register the applicant as an investment adviser representative unless the commissioner finds that the applicant is not of good business reputation; that the investment adviser named in the application is not a registered investment adviser; or the federal covered adviser named in the application has not made a notice filing with the commissioner. When the commissioner has registered an applicant as an investment adviser representative, the commissioner shall immediately notify the investment adviser or the federal covered adviser, as applicable, of such registration.

Every registered investment adviser shall promptly notify the ~~commissioner~~ department of the termination of the employment by the adviser of a registered investment adviser representative. Every registered investment adviser representative employed by a federal covered adviser or the federal covered adviser shall promptly notify the ~~commissioner~~ department of the termination of such employment. The registration of the investment adviser representative is automatically suspended from the time of termination of employment until such time as the representative is registered by the commissioner as a representative of another investment adviser or federal covered adviser.

The commissioner ~~may by rule or order provide for an examination to be taken by the applicant~~ shall require as a condition of registration that the applicant pass a written examination as evidence of knowledge of the securities business. At the discretion of the commissioner, certain professional designations may be accepted in lieu of an examination.

6. Refusal of registration. If the commissioner has reason to believe there are grounds to refuse the approval of any application under this section, the commissioner may, by order, summarily postpone the approval of any application made under this section. If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-04-12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, the commissioner shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order must be mailed to the applicant at the applicant's business address, and if the application is for registration as an agent, to the registered dealer or issuer or if the application is for registration as an investment adviser representative to the investment adviser or federal covered adviser who proposed to employ such applicant. If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a dealer's, agent's, investment adviser's, or investment adviser representative's registration under section 10-04-11, such act or omission may constitute a sufficient ground for a finding by the commissioner that such applicant is not of good business reputation.

7. Record and renewal of registrations. The names and addresses of all persons who have been registered as dealers, agents, investment advisers, or investment adviser representatives, and all orders with respect thereto, and the names and addresses of all federal covered advisers who have made a notice filing must be recorded in a register of dealers, agents, investment advisers, federal covered advisers, and investment adviser representatives in the office of the commissioner. Every registration and notice filing under this section expires on ~~May first of each year, except for the registration of an investment adviser and investment adviser representative which will expire on~~ December thirty-first of each year, unless renewed. The commissioner may by order provide for expirations and renewals, including dates, forms, and procedures, adjust registration and notice filing fees to correspond with expiration dates, and do any other thing which may be necessary or convenient in order to participate in a central registration depository or any similar arrangement designed to promote uniformity, to ease regulatory burdens, or to encourage cooperation with other states, the securities and exchange commission, or any registered national securities association or exchange.
8. Fees. The fee, which must accompany the application, for registration, transfer, or notice filing, and for each annual renewal thereof is:
- | | |
|---|----------|
| a. For each dealer | \$200.00 |
| b. For each agent | \$60.00 |
| c. For each investment adviser or federal covered adviser | \$100.00 |
| d. For each investment adviser representative | \$50.00 |

An application to register as a dealer, agent, investment adviser, or investment adviser representative may, with the consent of the commissioner, be withdrawn upon written application, but in no event may any registration fees be returned.

SECTION 9. AMENDMENT. Subsection 4 of section 10-04-10.3 of the North Dakota Century Code is amended and reenacted as follows:

4. All the records ~~referred to in subsection 4~~ of any registered person are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or outside this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, if deemed practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or any other jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business, and in so cooperating may share any information obtained as a result of any investigation or examination.

SECTION 10. AMENDMENT. Subsection 1 of section 10-04-11 of the North Dakota Century Code is amended and reenacted as follows:

1. The commissioner may censure, place limitations on the activities of, suspend for a period not exceeding twelve months, or revoke the registration of any dealer, agent, investment adviser, or investment

adviser representative or any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer or investment adviser if, after a hearing or opportunity for hearing as provided in section 10-04-12, the commissioner finds that such registered dealer, agent, investment adviser, or investment adviser representative:

- a. Has violated or failed to comply with any provisions of this chapter or any order or rule of the commissioner under this chapter;
- b. Is, in the case of a dealer or investment adviser, insolvent;
- c. Has engaged in dishonest, fraudulent, or unethical practices in the securities business;
- d. Conducts business in purchasing or selling securities at such variations from current market prices as, in light of all the circumstances, are unconscionable or unfair to the purchasing public, or if such variance, including commissions on sales, unreasonably exceeds the price quoted by a recognized national quotation list as prescribed by the commissioner;
- e. Has failed to file with the ~~commissioner~~ department any financial record required pursuant to section 10-04-10.3, or has refused to permit or has otherwise impeded an examination into the person's affairs as provided by section 10-04-10.3 and subsection 3;
- f. Has filed an application for registration which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
- g. Has been convicted of an offense determined by the commissioner to have a direct bearing upon a person's ability to serve the public as a dealer, agent, investment adviser, or investment adviser representative, or the commissioner finds that a person, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1;
- h. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
- i. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a dealer, agent, investment adviser, or investment adviser representative;
- j. Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a dealer, agent, investment adviser, or investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order suspending or expelling membership in or association with a member of a self-regulatory organization registered under the Securities Exchange Act of 1934, the

Commodity Exchange Act, or the Investment Advisers Act of 1940; or is the subject of a United States post-office fraud order;

- k. Has, in connection with the offer, sale, or purchase of any security, directly or indirectly, effected a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase or sale of the security;
- l. Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business;
- m. Has failed reasonably to supervise the person's agents if the person is a dealer or the person's employees or investment adviser representatives if the person is an investment adviser; or
- n. Is the subject of an order entered by the insurance administrator of any state denying or revoking registration as an insurance producer, consultant, or the substantial equivalent of those terms as defined in section 26.1-26-02.

SECTION 11. AMENDMENT. Section 10-04-14 of the North Dakota Century Code is amended and reenacted as follows:

10-04-14. Service of process.

1. Every applicant for registration under this chapter, every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense, and every person making a notice filing under subsection 2 of section 10-04-08.4 shall file with the ~~commissioner~~ department, in such form as the commissioner prescribes, an irrevocable consent appointing the commissioner or the commissioner's successor in office to be the applicant's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process ~~in~~ with the ~~office of the commissioner~~ department, but it is not effective unless the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last-known address on file with the ~~commissioner~~ department, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.
2. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and the person has not filed a consent to service of process under subsection 1 and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the commissioner

or the commissioner's successor in office to be the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor, executor, or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on the person personally. Service may be made by leaving a copy of the process ~~in~~ with the office of the commissioner department, and it is not effective unless the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last-known address or takes other steps which are reasonably calculated to give actual notice, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

3. When process is served under this section, the court, or the commissioner in a proceeding before the commissioner, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

SECTION 12. AMENDMENT. Section 10-04-16 of the North Dakota Century Code is amended and reenacted as follows:

10-04-16. Orders, injunctions, and prosecutions for violations - Civil penalty. If it appears to the commissioner, either upon complaint or otherwise, that any person has engaged in, or is engaging in, or is about to engage in any act or practice or transaction that is prohibited by this chapter or by any order of the commissioner issued under this chapter or which is declared to be illegal in this chapter, the commissioner may:

1. Issue any order including cease and desist, rescission, stop, and suspension orders, which the commissioner deems necessary or appropriate in the public interest or for the protection of investors. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty against any person found in an administrative action to have violated any provision of this chapter, or any rule or order adopted or issued under this chapter, in an amount not to exceed ten thousand dollars for each violation. The commissioner may bring actions to recover penalties pursuant to this section in district court. A person aggrieved by an order issued pursuant to this subsection may request a hearing before the commissioner if a written request is made within fifteen days after receipt of the order. If a request for hearing is made under this subsection, the commissioner shall schedule a hearing within a reasonable time. Subsections 2, 3, and 4 of section 10-04-12 apply to any hearing conducted under this subsection. If, after a hearing, the commissioner sustains an order previously issued, the sustaining order is subject to appeal to the district court of Burleigh County by serving on the commissioner within twenty days after the date of entry of the sustaining order a written notice of appeal signed by the appellant stating:
 - a. The order of the commissioner from which the appeal is taken.

- b. The grounds upon which a reversal or modification of the order is sought.
 - c. A demand for a certified transcript of the record of the order.
2. Apply to the district court of any county in this state for an injunction restraining the person and the person's agents, employees, partners, officers, and directors from continuing the act, practice, or transaction or engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts warrant. In any proceeding for an injunction, the commissioner may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, or directors, and the production of the documents, books, and records 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 the injunction as the facts warrant, and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court ~~may~~ shall not require the commissioner to post a bond.
3. Refer any evidence available concerning the act, practice, or transaction to the appropriate criminal prosecutor who may, with or without the reference, institute the necessary criminal proceedings. The prosecutor may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, and directors, and the production of any documents, books, and records necessary for the prosecution of the criminal proceedings.

SECTION 13. AMENDMENT. Subsection 1 of section 10-04-16.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The ~~commissioner~~ department may:
 - a. Make such public or private investigations within or outside of this state as ~~the commissioner deems~~ deemed necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. For the purposes of this section, an investigation may include an examination of the books and records of any person registered under the provisions of this chapter. In the discretion of the commissioner, the expense reasonably attributed to an investigation under this section must be paid by the dealer, agent, investment adviser, or investment adviser representative whose affairs are investigated.
 - b. Require or permit any person to file a statement in writing, under oath or otherwise ~~as the commissioner determines~~, as to all the facts and circumstances concerning the matter to be investigated.
 - c. Publish information concerning any violation of this chapter or any rule or order hereunder and may keep confidential the information or documents obtained or prepared in the course of any investigation conducted under this section but only during an active and ongoing investigation. If an investigation under this section

extends beyond six months, the commissioner shall, upon a request by any party, state in writing that the need for confidentiality still exists, the general reason why the need exists, and the date, as can best be determined at the time, when the need for confidentiality will cease.

SECTION 14. AMENDMENT. Subsection 3 of section 10-04-17 of the North Dakota Century Code is amended and reenacted as follows:

3. The provisions of this section do not apply to a violation of subsection 1 or 3 of section 10-04-08.4.

SECTION 15. AMENDMENT. Subsection 1 of section 10-04-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Any person who willfully violates any provision of this chapter, except subsection 1 or 3 of section 10-04-08.4 or subsection 4 of section 10-04-10, or any rule or order of the commissioner made pursuant to the provisions of this chapter, or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful shall be guilty of a class B felony.

SECTION 16. REPEAL. Section 10-04-10.2 of the North Dakota Century Code is repealed.

SECTION 17. EMERGENCY. Section 8 of this Act is declared to be an emergency measure.

Approved March 21, 2003
Filed March 21, 2003

CHAPTER 83**HOUSE BILL NO. 1276**
(Representatives Maragos, N. Johnson)
(Senator Klein)**SECURITIES EXEMPT FROM REGISTRATION**

AN ACT to amend and reenact subdivision d of subsection 8 of section 10-04-06 of the North Dakota Century Code, relating to securities exempt from registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁰ **SECTION 1. AMENDMENT.** Subdivision d of subsection 8 of section 10-04-06 of the North Dakota Century Code is amended and reenacted as follows:

- d. Such securities are listed in Standard and Poor's, Mergent's industrial manual, Mergent's bank and finance manual, Mergent's transportation manual, Mergent's public utility manual, or Fitch's individual stock bulletin or are filed under section 13 or 15(d) of the federal Securities and Exchange Act of 1934 [ch. 404, title I, sec. 1; 48 Stat. 881; 15 U.S.C. 78 et seq.].

Approved March 20, 2003
Filed March 20, 2003

⁴⁰ Section 10-04-06 was also amended by section 4 of Senate Bill No. 2084, chapter 82.

CHAPTER 84

HOUSE BILL NO. 1106

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

PROPERTY ASSESSMENT VALUATION

AN ACT to create and enact a new subdivision to subsection 2 of section 10-06.1-10 and a new section to chapter 65-02 of the North Dakota Century Code, relating to valuation of certain farmland or ranchland acquired by certain nonprofit organizations and valuation of property of the workers compensation bureau; and to amend and reenact subsection 3 of section 57-02-08.1 and sections 57-12-09 and 57-14-07 of the North Dakota Century Code, relating to homestead tax credit forms, notice of increased assessment to real estate owners, and taxes on escaped real property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 2 of section 10-06.1-10 of the North Dakota Century Code is created and enacted as follows:

All property subject to valuation must be assessed for the purpose of making the payments under subdivision e in the same manner as other real property in this state is assessed for tax purposes. Before June thirtieth of each year the county auditor of any county in which property subject to valuation is located shall give written notice to the nonprofit organization and the tax commissioner of the value placed by the county board of equalization upon each parcel of property subject to valuation in the county.

SECTION 2. AMENDMENT. Subsection 3 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

3. All forms necessary to effectuate this section must be prescribed ~~and, designed, and made available~~ by the tax commissioner ~~who shall distribute annually an adequate supply of them to each county director of tax equalization~~. The county directors of tax equalization shall make these forms available upon request.

SECTION 3. AMENDMENT. Section 57-12-09 of the North Dakota Century Code is amended and reenacted as follows:

57-12-09. Written notice of increased assessment to real estate owner. When any assessor has increased the assessed valuation of any lot or tract of land together with any improvements thereon by fifteen percent or more 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 by such assessor to the property owner or mailed to the property owner at the property owner's last-known address except that no such notice need be delivered or mailed if the ~~assessment~~ assessed valuation is increased by less than one thousand five hundred dollars. The tax commissioner shall prescribe suitable forms for this notice and such notice must also show the true and full value as defined by law of the property, including such 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. Such 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.

SECTION 4. AMENDMENT. Section 57-14-07 of the North Dakota Century Code is amended and reenacted as follows:

57-14-07. Entry on delinquent lists. After review by the board of county commissioners, the taxes against escaped property for prior years must be entered upon the tax list. In the case of personal property, such taxes must be entered upon the most recent delinquent personal property tax list. If such list, at the time, is in the hands of the treasurer, the auditor shall certify such taxes to the treasurer, and the treasurer shall enter them upon such delinquent tax list. If the most recent delinquent personal property tax list, at the time, is in the hands of the sheriff, the auditor shall certify such taxes to the sheriff, and the sheriff shall enter them upon such tax list. In the case of escaped real property, such taxes, if entered between the first day of July and the ~~date of the first publication day of the tax sale list~~ November, must be entered upon the most recent delinquent real property tax list. If entered ~~between that date~~ November first and July first following, such taxes must be entered upon the current real property tax list. In either case, such real property taxes must be certified to the treasurer by the auditor and entered in the tax list by the treasurer. Taxes upon escaped property for prior years, whether upon real or personal property, are subject to the same penalties as other taxes, and such taxes must be enforced and apportioned as other taxes upon the lists upon which they are entered are enforced and apportioned.

SECTION 5. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Assessment of property - Notice to bureau. All property subject to valuation must be assessed for the purpose of making the payments under section 65-02-31 in the same manner as other real property in this state is assessed for tax purposes. Before June thirtieth of each year, the county auditor of any county in which property subject to valuation is located shall give written notice to the workers compensation bureau and the tax commissioner of the value placed by the county board of equalization upon each parcel of property subject to valuation in that county.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 85**HOUSE BILL NO. 1362**
(Representatives DeKrey, Delmore)
(Senators Nelson, Traynor)**CORPORATION AND LLC LAW REVISIONS**

AN ACT to create and enact sections 10-19.1-01.1, 10-19.1-100.1, 10-19.1-149.1, 10-32-02.1, 10-32-153.1, 10-33-01.1, 10-33-142.1, 45-10.1-01.1, 45-10.1-01.2, 45-10.1-63, 45-10.1-64, 45-10.1-65, 45-10.1-66, 45-10.1-67, 45-10.1-68, 45-10.1-69, 45-10.1-70, 45-10.1-71, 45-10.1-72, 45-13-01.1, 45-16-07, 45-16-08, 45-22-01.1, 45-23-01.1, and 45-23-07 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; to amend and reenact section 10-19.1-01, subsection 4 of section 10-19.1-13, sections 10-19.1-14 and 10-19.1-19, subsection 2 of section 10-19.1-31, subsections 1 and 2 of section 10-19.1-43, subsections 1 and 2 of section 10-19.1-47, subsection 1 of section 10-19.1-63, subsection 3 of section 10-19.1-71, subsection 3 of section 10-19.1-72, sections 10-19.1-75 and 10-19.1-75.2, subsection 1 of section 10-19.1-76.2, subsection 1 of section 10-19.1-87, section 10-19.1-100, subsection 1 of section 10-19.1-110, subsections 2 and 3 of section 10-19.1-113.1, subsection 3 of section 10-19.1-129, subsection 2 of section 10-19.1-146, subsection 10 of section 10-31-01, section 10-32-02, subsections 2, 3, and 4 of section 10-32-07, subsection 5 of section 10-32-10, section 10-32-11, subsection 1 of section 10-32-13, section 10-32-15, subsection 6 of section 10-32-17, subsection 1 of section 10-32-22, subsection 17 of section 10-32-23, sections 10-32-36 and 10-32-37, subsections 2 and 3 of section 10-32-38, subsections 2 and 3 of section 10-32-39, subsection 3 of section 10-32-40, sections 10-32-40.1, 10-32-43, and 10-32-43.2, subsection 1 of section 10-32-48, subsection 1 of section 10-32-50, section 10-32-51, subsection 1 of section 10-32-54, subsection 4 of section 10-32-55, section 10-32-56, subsection 2 of section 10-32-57, subsection 3 of section 10-32-58, subsection 1 of section 10-32-59, sections 10-32-60 and 10-32-61, subsection 1 of section 10-32-64, section 10-32-67, subsections 2 and 3 of section 10-32-68, sections 10-32-69, 10-32-70, 10-32-73, and 10-32-74, subsection 2 of section 10-32-76, subsection 2 of section 10-32-77, subsections 2 and 3 of section 10-32-78, subsection 2 of section 10-32-78.1, subsection 1 of section 10-32-79, sections 10-32-80, 10-32-81, and 10-32-83, subsections 1 and 2 of section 10-32-84, subsections 1 and 3 of section 10-32-85, subsections 2 and 4 of section 10-32-86, subsections 1 and 2 of section 10-32-87, sections 10-32-88, 10-32-89, and 10-32-92, subsection 3 of section 10-32-94, section 10-32-95, subsection 1 of section 10-32-97, sections 10-32-99 and 10-32-104, subsections 1 and 2 of section 10-32-108, subsection 2 of section 10-32-112, subsection 3 of section 10-32-113, subsection 1 of section 10-32-114, subsections 2 and 3 of section 10-32-117, subsection 1 of section 10-32-119, subsection 2 of section 10-32-130.1, subsection 3 of section 10-32-132, subsection 2 of section 10-32-149, sections 10-33-01, 10-33-10, 10-33-11, and 10-33-21, subsection 3 of section 10-33-23, subsection 2 of section 10-33-25, subsection 1 of section 10-33-27, subsections 1 and 2 of section 10-33-39, subsections 1 and 2 of section

10-33-43, subsection 1 of section 10-33-44, subsection 1 of section 10-33-50, subsection 3 of section 10-33-65, subsection 3 of section 10-33-66, sections 10-33-73 and 10-33-75, subsection 1 of section 10-33-77, sections 10-33-81 and 10-33-93, subsection 1 of section 10-33-101, subsections 2 and 3 of section 10-33-103, subsection 4 of section 10-33-104, subsection 1 of section 10-33-107, subsections 1, 2, and 3 of section 10-33-108, subsection 3 of section 10-33-120, subsection 1 of section 10-33-128, subsection 2 of section 10-33-139, section 45-10.1-01, subsection 6 of section 45-10.1-02, sections 45-10.1-03 and 45-10.1-07.1, subsections 7 and 8 of section 45-10.1-09, sections 45-10.1-13, 45-10.1-55, 45-10.1-56, and 45-13-01, subsections 5 and 6 of section 45-13-04.1, section 45-13-04.2, subsections 6 and 7 of section 45-13-05, subsection 1 of section 45-13-06, subsection 1 of section 45-15-03, subsection 1 of section 45-15-03.1, subsection 2 of section 45-15-03.2, section 45-15-04, subsection 1 of section 45-19-04, subsections 1 and 2 of section 45-21-05, subsection 2 of section 45-21-06, subsections 1 and 2 of section 45-21-07, section 45-22-01, subsection 3 of section 45-22-03, subsection 5 of section 45-22-04, section 45-22-05, subsection 2 of section 45-22-17, subsection 2 of section 45-22-21.1, section 45-23-01, and subsection 5 of section 45-23-03 of the North Dakota Century Code, relating to business corporations, professional corporations, limited liability companies, nonprofit corporations, limited partnerships, partnerships, limited liability partnerships, and limited liability limited partnerships; and to repeal sections 45-10.1-14, 45-10.1-15, and 45-10.1-16 of the North Dakota Century Code, relating to limited partnerships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-01. Definitions. For the purposes of this chapter, unless the context clearly indicates a different meaning is intended:

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Acquiring organization" means the corporation, foreign corporation, or domestic or foreign limited liability company acquiring in an exchange the shares of a corporation or foreign corporation or the membership interests of a domestic or foreign limited liability company.
3. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including a zip code₁ 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.
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, and articles of dissolution.

b. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.

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

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. "Board" or "board of directors" means the board of directors of a corporation.

~~6.~~ 7. "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.

~~7.~~ 8. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.

~~8.~~ 9. "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.

~~9.~~ 10. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.

~~10.~~ 11. "Constituent corporation" means a corporation or a foreign corporation that:

a. In a merger, is either the surviving corporation or a corporation that is merged into the surviving organization; or

b. In an exchange, is either the acquiring corporation or a corporation whose shares are acquired by the acquiring organization.

41. 12. "Constituent organization" means a corporation, foreign corporation, limited liability company, or foreign limited liability company 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.
42. 13. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
43. 14. "Director" means a member of the board.
44. 15. "Distribution" means a direct or indirect transfer of money or other property, other than a corporation's own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of the corporation's shareholders in respect of the corporation's shares, and may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of the corporation's shares, or otherwise.
45. 16. "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.
46. 17. "Domestic organization" means an organization created under the laws of this state.
18. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
19. "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.
20. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
21. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
22. "Filed with the secretary of state" means, except as otherwise permitted by law or rule, a signed original or a legible facsimile telecommunication of a signed original of a request for reserved name or a signed original of all other documents;

- a. That a document 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. ~~The~~
- b. That the secretary of state shall ~~endorse on the original the word "filed" and the month, day, and year, then:~~
- (1) Record the actual date on which the document is filed, and if different the effective date of filing; and ~~record~~
- (2) Record the document in the office of the secretary of state.
47. 23. "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.
48. 24. "Foreign limited liability company" means a limited liability company organized for profit which 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.
49. 25. "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.
26. "Good faith" means honesty in fact in the conduct of an act or transaction.
20. 27. "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 ~~if:~~
- a. If the person intentionally does the act or causes the result prohibited by the statute; or ~~if~~
- 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.
24. 28. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
22. 29. "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.
- ~~23.~~ 30. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.

~~24.~~ 31. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.

~~25.~~ 32. "Notice" is:

a. Is given by a shareholder of a corporation to the corporation or an officer of the corporation ~~when:~~

(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-

a. ~~In all other cases, "notice" is; 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 to a person, 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; or

(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.
- b. ~~d.~~ Notice is ~~is~~ given by mail when deposited in the United States mail with sufficient postage affixed.
- c. ~~e.~~ Notice is ~~is~~ deemed received when it is given.
26. ~~33.~~ 33. "Officer" means an individual who is eighteen years of age or more who is ~~elected~~:
- a. Elected, appointed, or otherwise designated as an officer by the board; ~~or deemed~~
- b. Deemed elected as an officer pursuant to section 10-19.1-56.
27. ~~34.~~ 34. "Organization" means, ~~whether~~:
- a. Whether domestic or foreign, a corporation ~~incorporated in or authorized to do business in this state under this or another chapter of this code~~, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; 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.
- ~~28.~~ 35. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.
- ~~29.~~ 36. "Owners" means:
- Shareholders in the case of a corporation; and
 - Members in the case of a limited liability company or a nonprofit corporation.
- ~~30.~~ 37. "Ownership interests" means:
- Shares in the case of a corporation;
 - Membership interests in the case of a nonprofit corporation or limited liability company; and
 - Similar interests in other organizations.
- ~~31.~~ 38. "Parent" of a specified corporation means a corporation or limited liability company that directly, or indirectly through related ~~corporations or limited liability companies~~ organizations, owns more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.
- ~~32.~~ 39. "Principal executive office" means:
- If the corporation has an elected or appointed president, an office where the elected or appointed president of a corporation has an office; or if
 - If the corporation has no elected or appointed president, then the registered office of the corporation.
- ~~33.~~ 40. "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.
41. "Registered office" means the place in this state designated in the articles as the registered office of the corporation.
- ~~34.~~ 42. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- Owns, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;
 - 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.
- ~~35.~~ 43. "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.
44. "Security" has the meaning given in section 10-04-02.
- ~~36.~~ 45. "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.
- ~~37.~~ 46. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.
- ~~38.~~ 47. "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.
- ~~39.~~ 48. "Signed" means ~~that:~~
- 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 document, is placed on a document, as provided in subsection 39 of under section 41-01-11, 41-01-09; and:
- ~~a.~~ b. With respect to a document required by this chapter to be filed with the secretary of state, ~~means that the:~~
- (1) The document 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
- b. ~~With respect to a document not required by this chapter to be filed with the secretary of state, the signature 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 document.~~
- (2) The signature and the document are communicated by a method or medium of communication acceptable by the secretary of state.
- ~~40.~~ 49. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
- ~~41.~~ 50. "Subsidiary" of a specified corporation means:

- a. A corporation having more than fifty percent of the voting power of the corporation's shares entitled to vote for directors owned directly, or indirectly through related ~~corporations or limited liability companies~~ organizations, by the specified corporation; or
- b. A limited liability company having more than fifty percent of the voting power of the limited liability company's membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company.
- ~~42.~~ 51. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.
- ~~43.~~ 52. "Surviving organization" means the corporation or foreign corporation or domestic or foreign limited liability company resulting from a merger.
- ~~44.~~ 53. "Vote" includes authorization by written action.
- ~~45.~~ 54. "Written action" means a:
- a. A written document signed by all of the persons required to take the action; ~~or the~~
- b. The counterparts of a written document signed by any of the persons taking the action described.
- (1) Each counterpart constitutes the action of the person signing; and ~~all~~
- (2) All the counterparts, taken together, constitute one written action by all of the persons signing the counterparts.

SECTION 2. Section 10-19.1-01.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-01.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 3. AMENDMENT. Subsection 4 of section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

4. A corporation that is ~~merged~~ the surviving organization in a merger with another domestic one or foreign organization, or that is incorporated by

~~the reorganization of one or more domestic or foreign other~~ organizations, or that acquires by sale, lease, or other disposition to or exchange with a ~~domestic or foreign~~ an organization all or substantially all of the assets of another ~~domestic or foreign~~ 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, 45-10.1-03, 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.

SECTION 4. AMENDMENT. Section 10-19.1-14 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-14. Reserved name.

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-19.1-13 may be reserved by any person.
2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in section 10-19.1-147:
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in section 10-19.1-147.
4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, together with the fees provided in section 10-19.1-147.
5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for reserved name.~~

6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 5. AMENDMENT. Section 10-19.1-19 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-19. Procedure for amendment after issuance of shares.

1. Except as otherwise provided in section 10-19.1-18, after the issuance of shares by the corporation, the articles may be amended in the manner set forth in this section.
2. A resolution approved by the affirmative vote of a majority of the directors present, or proposed by a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the shareholders of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the shareholders and voted upon at one meeting, but the same or substantially the same amendment proposed by a shareholder or shareholders need not be submitted to the shareholders or be voted upon at more than one meeting during a fifteen-month period, except that if a corporation is registered or reporting under the federal securities laws, the provisions of this sentence do not apply to the extent that these provisions are in conflict with the federal securities laws or rules adopted under those laws. The resolution may amend the articles in their entirety to restate and supersede the original articles and all amendments to them.
3. Written notice of the shareholders' meeting setting forth the substance of the proposed amendment must be given to each shareholder entitled to vote in the manner provided in section 10-19.1-73 for the giving of notice of meetings of shareholders.
4. The proposed amendment to the articles is adopted:
 - a. When approved by the affirmative vote of the shareholders required by section 10-19.1-74, except as provided in subdivision b and in subsection 5; or
 - b. If the articles provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles is the larger of:
 - (1) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or

- (2) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.
5. An amendment that merely restates the existing articles, as amended, may be authorized by a resolution approved by the board and may be submitted to and approved by the shareholders as provided in subsections 2, 3, and 4.
6. Notwithstanding any contrary provision of this chapter, the board of a corporation that is registered as an open-end management investment company under the Investment Company Act of 1940, as amended, may, without shareholder approval, increase or decrease, but not below the then outstanding shares, the aggregate number of shares the corporation has authority to issue, including shares of any class or series, unless a provision has been included in the corporation's articles prohibiting the board from increasing or decreasing the aggregate number of shares, or any class or series of shares, as applicable, that the corporation has authority to issue.

SECTION 6. AMENDMENT. Subsection 2 of section 10-19.1-31 of the North Dakota Century Code is amended and reenacted as follows:

2. Initial bylaws may be adopted by the first board or by the incorporators, pursuant to section 10-19.1-30. Unless reserved by the articles to the shareholders, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. ~~After the adoption of the initial bylaws, the board may not adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors.~~

SECTION 7. AMENDMENT. Subsections 1 and 2 of section 10-19.1-43 of the North Dakota Century Code are amended and reenacted as follows:

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2.
- a. If the articles, bylaws, or board fail to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.
- b. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.
- c. Any participation in a meeting by either of the means set forth in subsection 2 constitutes presence at the meeting.
2. ~~A board~~ Any meeting may be conducted ~~by~~:

- a. ~~A conference among directors using any means of~~ Solely by one or more means of remote communication through which all of the directors may simultaneously hear participate with each other during the conference, if meeting:
- (1) ~~If the same notice required by subsection 3 is given of for the conference as would be required by subsection 3 for a meeting;~~ and if
- (2) ~~If the number of directors participating in the conference meeting is a quorum at a meeting. Participation in a meeting by this means is personal presence at the meeting; or~~
- b. ~~Any~~ By means of conference telephone or, if authorized by the board, by one or more other means of remote communication, in each case, through which the director, other directors so participating, and all directors physically present at the meeting may ~~simultaneously hear participate with~~ each other during the meeting. ~~Participation in a meeting by this means is personal presence at the meeting.~~

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 10-19.1-47 of the North Dakota Century Code are amended and reenacted as follows:

1. An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of directors that would be required to take written action, signed by all of the directors, if the articles so provide, the same action at a meeting of the board at which all directors were present.
2. The written action is effective when signed by, or consented to by authenticated electronic communication, the required number of directors, unless a different effective time is provided in the written action.

SECTION 9. AMENDMENT. Subsection 1 of section 10-19.1-63 of the North Dakota Century Code is amended and reenacted as follows:

1. Subject to any restrictions in the articles:
 - a. ~~The consideration for the issuance of shares may be paid, in whole or in part, in money; in other property, tangible or intangible; or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued 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. Shares may be issued for any consideration, including, without limitation:~~
 - (1) Money or other tangible or intangible property received by the corporation or to be received by the corporation under a written agreement, or services rendered to the corporation or

to be rendered to the corporation, as authorized by resolution approved by the affirmative vote of the directors required by section 10-19.1-46; or

- (2) If provided for in the articles, approved by the affirmative vote of the shareholders required by section 10-19.1-74, establishing a price in money or other consideration, or a minimum price, or a general formula or method by which the price will be determined.
- b. Without any new or additional consideration, a corporation may issue the corporation's own shares in exchange for or in conversion of the corporation's 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 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 of a class or series, shares of which are then outstanding, may not 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.

SECTION 10. AMENDMENT. Subsection 3 of section 10-19.1-71 of the North Dakota Century Code is amended and reenacted as follows:

3. A regular meeting, if any, must be held on the date and at the time and place fixed by, or in a manner authorized by, the articles or bylaws, except that a meeting called by or at the demand of a shareholder pursuant to subsection 2 must be held in the county where the principal executive office of the corporation is located. To the extent authorized by the articles or bylaws, the board may determine that a regular meeting of the shareholders shall be held solely by means of remote communication in accordance with subsection 3 of section 10-19.1-75.2.

SECTION 11. AMENDMENT. Subsection 3 of section 10-19.1-72 of the North Dakota Century Code is amended and reenacted as follows:

3. Special meetings must be held on the date and at the time and place fixed by the president, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to subsection 2 must be held in the county where the principal executive office is located. To the extent authorized by the articles or bylaws, the board may determine that a special meeting of the shareholders shall be held solely by means of remote communication in accordance with subsection 3 of section 10-19.1-75.2.

SECTION 12. AMENDMENT. Section 10-19.1-75 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-75. Action without a meeting. An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the shareholders 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 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.
 - a. When written action is permitted to be taken by less than all shareholders, all shareholders must be notified immediately of its text and effective date.
 - b. Failure to provide the notice does not invalidate the written action.
 - c. 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.
2. The written action is effective when it has been signed, or consented to by authenticated electronic communication, by the required shareholders, unless a different effective time is provided in the written action.
3. ~~When written action is permitted to be taken by less than all shareholders, all shareholders must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. 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.~~
4. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the officers signing the certificate must so indicate if the action was taken under this section.

SECTION 13. AMENDMENT. Section 10-19.1-75.2 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-75.2. Electronic Remote communications for shareholder meetings.

1. This section shall be construed and applied to:
 - a. Facilitate remote communication consistent with other applicable law; and
 - b. Be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.
2. To the extent authorized in the articles or the bylaws and determined by the board:
 - a. A ~~conference among~~ meeting of the shareholders may be held solely by any combination of means of remote communication

through which the participants may ~~simultaneously hear each other during~~ participate in the conference constitutes a regular or special meeting of shareholders:

- a. (1) ~~If the same notice of the meeting is given of the conference to every holder of shares entitled to vote as would be required by this chapter for a meeting; and~~
 - b. (2) ~~If the number of shares held by the shareholders participating in the conference meeting would be sufficient to constitute a quorum at a meeting.~~
2. ~~Participation in a conference meeting the requirements of subsection 4 constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-19.1-76.2 are met.~~
3. b. ~~A shareholder may participate in~~ not physically present in person or by proxy at a regular or special meeting of shareholders not described in subsection 4 may by any means of remote communication through which the shareholder, other participants, and all persons physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-19.1-76.2 are met, participate in a meeting of shareholders held at a designated place.
4. 3. In any meeting of shareholders held solely by means of remote communication under subdivision a of subsection 2 or in any meeting of shareholders held at a designated place in which one or more shareholders participate by means of remote communication under subdivision b of subsection 2:
- a. The corporation shall implement reasonable measures to:
 - (1) Verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a shareholder; and
 - (2) Provide each shareholder participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:
 - (a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;
 - (b) If allowed by the procedures governing the meeting, have the shareholder's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and
 - (c) If otherwise entitled, vote on matters submitted to the shareholders.

- b. Participation in a meeting by this means constitutes presence at the meeting in person or by proxy if all of the requirements of section 10-19.1-76.2 are met.
4. With respect to notice to shareholders:
- a. Any notice to shareholders given by the corporation under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the shareholder to whom the notice is given is effective when given. The notice is deemed given:
- (1) If by facsimile communication, when directed to a telephone number at which the shareholder has consented to receive notice;
- (2) If by electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice;
- (3) If by a posting on an electronic network on which the shareholder has consented to receive notice, together with separate notice to the shareholder of the specific posting, upon the later of:
- (a) The posting; or
- (b) The giving of the separate notice.
- (4) If by any other form of electronic communication by which the shareholder has consented to receive notice, when directed to the shareholder.
- b. An affidavit of the secretary, other authorized officer, or 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.
- c. Consent by a shareholder 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 shareholder. However, no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.
5. Any ballot, vote, authorization, or consent submitted by electronic communication under this chapter may be revoked by the shareholder submitting the ballot, vote, authorization, or consent so long as the revocation is received by an officer of the corporation at or before the meeting or before an action without a meeting is effective according to section 10-19.1-75.
6. Waiver of notice by a shareholder of a meeting by means of authenticated electronic communication described in subsection 4 or 3 may be given in the manner provided in subsection 4 of section 10-19.1-73. Participation in a meeting by means of ~~communications~~

remote communication described in subdivisions a and b of subsection 4 of 3 2 is a waiver of notice of that meeting, except when the shareholder objects:

- a. At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or
- b. Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 14. AMENDMENT. Subsection 1 of section 10-19.1-76.2 of the North Dakota Century Code is amended and reenacted as follows:

1. At or before the meeting for which the appointment is to be effective, a shareholder may cast or authorize the casting of a vote ~~by:~~

- a. By filing with an officer authorized to tabulate votes a written appointment of a proxy which is signed by the shareholder, with.

- b. By telephonic transmission or authenticated electronic communication to an officer authorized to tabulate votes, whether or not accompanied by written instructions of the shareholder, of an appointment of a proxy.

- a. ~~Before the meeting, a shareholder may cast or authorize the casting of a vote by a proxy by transmitting to the corporation or the corporation's duly authorized agent an appointment of a proxy by means of telegram, cablegram, or any other form of electronic transmission, including telephonic transmission, whether or not accompanied by written instructions of the shareholders. An electronic~~

- (1) The telephonic transmission or authenticated electronic communication must set forth or be submitted with information indicating from which it can be determined that the appointment is authorized by the shareholder. If it is determined a telegram, cablegram, or other electronic reasonably concluded that the telephonic transmission or authenticated electronic communication is valid, the inspectors of election or, if there are no inspectors, the other persons making that determination of validity shall specify the information upon which they relied to make that determination.

- (2) A proxy so appointed may vote on behalf of the shareholder, or otherwise participate, in a meeting by remote communication according to section 10-19.1-75.2 to the extent the shareholder appointing the proxy would have been entitled to participate by remote communication according to section 10-19.1-75.2 if the shareholder did not appoint the proxy.

- ~~b.~~ c. A copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the

original writing or transmission could be used if the copy, facsimile, telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

- € d. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed or consented to by authenticated electronic communication by any one of the shareholders, unless the corporation receives from any of those shareholders written notice or authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.

SECTION 15. AMENDMENT. Subsection 1 of section 10-19.1-87 of the North Dakota Century Code is amended and reenacted as follows:

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. 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; or
 - (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;
 - b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation, but not including a transaction permitted without shareholder approval in subsection 1 of section 10-19.1-104, or a disposition in dissolution described in subsection 2 of section 10-19.1-109 or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;
 - c. A plan of merger to which the corporation is a ~~party~~ 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, to which the corporation is a constituent organization as the

corporation whose shares will be acquired by the acquiring corporation, except as provided in subsection 3; or

- e. 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.

SECTION 16. 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 parent owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary directly, or indirectly through related ~~corporations or limited liability companies~~ 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 ~~corporations or limited liability companies~~ 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 ~~may~~
 - 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 or of the present governors of the parent required by section 10-32-83 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 of the parent, 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. 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. A Notice of the action, including a copy of the plan of merger must be mailed 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. ~~The date a copy of the plan of merger was mailed to owners, other than the parent or a subsidiary, of each subsidiary that is a constituent organization in the merger; and~~
 - d. A statement that the plan of merger is approved by the parent under this section.
7. ~~Within thirty days after a copy of the plan of merger is mailed to owners of each subsidiary that is a constituent organization to the merger or upon waiver of the mailing by the owners of all outstanding ownership interests of each subsidiary that is a constituent organization to the merger, the~~ 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 surviving constituent organization's legal representative. 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, the owners of each domestic subsidiary 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. 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, that owner of the parent has dissenter's rights as provided under section 10-19.1-87 or 10-32-54. 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 17. Section 10-19.1-100.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-100.1. Merger to effect a holding company reorganization.

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 that merges with or into the subsidiary constituent corporation.
 - c. "Subsidiary constituent corporation" means the subsidiary that the parent constituent corporation merges with or into in the merger.
2. Unless its articles expressly provide otherwise, and subject to subdivision 3, a parent constituent corporation may merge with or into a subsidiary constituent corporation without a vote of the shareholders of the parent constituent corporation.
3. A merger may be accomplished under this section only if each of the following requirements is met:
 - a. The holding company and the constituent corporations to the merger are each organized under this chapter;
 - b. At all times following the issuance of shares until the consummation of a merger under this section, the holding company was a direct wholly owned subsidiary of the parent constituent corporation;

- c. Immediately before the consummation of a merger under this section, the subsidiary constituent corporation is an indirect wholly owned subsidiary of the parent constituent corporation and a direct wholly owned subsidiary of the holding company;
- d. The parent constituent corporation and the subsidiary constituent corporation are the only constituent corporations to the merger;
- e. Immediately after the merger becomes effective, the surviving corporation becomes or remains a direct wholly owned subsidiary of the holding company;
- f. Each share or fraction of a share of the parent constituent corporation outstanding immediately before the effective time of the merger is converted in the merger into a share or equal fraction of a share of the holding company having the same designation and relative rights and preferences, and the same restrictions thereon, as the share or fraction of a share of the parent constituent corporation being converted in the merger;
- g. The articles and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles and bylaws of the parent constituent corporation immediately before the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board, and the initial subscribers for shares and the provisions contained in any amendment to the articles of the parent constituent corporation that were necessary to effect an exchange, reclassification, or cancellation of shares if the exchange, reclassification, or cancellation has become effective;
- h. The articles and bylaws of the surviving corporation immediately following the effective time of the merger are identical to the articles and bylaws of the parent constituent corporation immediately before the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board, and the initial subscribers for shares and the provisions contained in any amendment to the articles of the parent constituent corporation that were necessary to effect an exchange, reclassification, or cancellation of shares if the exchange, reclassification, or cancellation has become effective, except that:
 - (1) The articles of the surviving corporation shall be amended in the merger to contain a provision requiring that any act or transaction by or involving the surviving corporation, other than the election or removal of directors of the surviving corporation, that requires for its adoption under this chapter or its articles the approval of the shareholders of the surviving corporation shall, by specific reference to this section, require, in addition, the approval of the shareholders of the holding company, or any successor by merger, by the same vote as is required by this chapter or the articles of the surviving corporation; and

- (2) The articles of the surviving corporation may be amended in the merger to reduce the number of classes, series, and shares that the surviving corporation is authorized to issue;
 - i. The directors of the parent constituent corporation become or remain the directors of the holding company immediately after the merger becomes effective;
 - j. The board of the parent constituent corporation determines that the shareholders of the parent constituent corporation will not recognize gain or loss for United States federal income tax purposes; and
 - k. A resolution approved by the affirmative vote of a majority of the directors of the parent constituent corporation present sets forth a plan of merger that contains provisions addressing the requirements of subdivisions a through j.
- 4. Neither paragraph 1 of subdivision h of subsection 3, nor any provisions of the surviving corporation's articles required by that item may be construed to require approval of the shareholders of the holding company to elect or remove directors of the surviving corporation.
- 5. If the name of the holding company at the time the merger takes effect is the same as the name of the parent constituent corporation immediately before that time, the shares of the holding company into which the shares of the parent constituent corporations are converted in the merger must, unless new certificates are issued, be represented by the share certificates that previously represented shares of the parent constituent corporation.
- 6. Articles of merger must be:
 - a. Prepared that contain:
 - (1) The plan of merger; and
 - (2) A statement that the plan of merger was adopted under this section.
 - b. Signed on behalf of the parent constituent corporation and filed with the secretary of state.
- 7. The secretary of state shall issue a certificate of merger to the surviving corporation or its legal representative.
- 8. A merger between a parent and a subsidiary may be accomplished under sections 10-19.1-97, 10-19.1-98, 10-19.1-99, and 10-19.1-100 instead of this section, in which case this section does not apply.

SECTION 18. 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 ~~23~~ 32 of section 10-19.1-01.

SECTION 19. AMENDMENT. Subsections 2 and 3 of section 10-19.1-113.1 of the North Dakota Century Code are amended and reenacted as follows:

2. When the certificate of dissolution has been issued by the secretary of state, or on a later date within thirty days after filing if the articles of dissolution so provide, the corporation is dissolved.
3. The secretary of state shall issue to the ~~dissolved~~ corporation, or its legal representative, a certificate of dissolution that contains:
 - a. The name of the corporation;
 - b. The date the ~~articles of dissolution were filed with the secretary of state~~ is effective; and
 - c. A statement that the corporation was dissolved on the effective date of the dissolution.

SECTION 20. AMENDMENT. Subsection 3 of section 10-19.1-129 of the North Dakota Century Code is amended and reenacted as follows:

3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. ~~The~~ 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 a person who is not a party, verifying that ~~ne~~ neither the registered agent ~~or~~ nor an officer can be found at the registered office ~~must be provided to the secretary of state. Service on the secretary of state of any process, notice, or demand is;~~ and
 - c. Is deemed personal service upon the corporation and must be made by filing with the secretary of state ~~an original and two;~~
 - (1) Three copies of the process, notice, or demand, ~~with the;~~ and
 - (2) The fees provided in section 10-19.1-147. The secretary of state shall immediately forward, by registered mail, addressed to the corporation at the 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.

⁴¹ **SECTION 21. AMENDMENT.** Subsection 2 of section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~subdivisions~~ subdivision g, i, and j 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 prescribed in subsection ~~39~~ 48 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 ~~subdivisions~~ subdivision g, i, and j of subsection 1 to any person, except a person who 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.

SECTION 22. Section 10-19.1-149.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-149.1. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any document is released to the public.

SECTION 23. AMENDMENT. Subsection 10 of section 10-31-01 of the North Dakota Century Code is amended and reenacted as follows:

10. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which ~~before the passage of this chapter could not be performed by a corporation, limited liability company, or a limited liability partnership~~ requires as a condition of licensure an undergraduate or advanced college degree in the specific field.

⁴¹ Section 10-19.1-146 was also amended by section 4 of Senate Bill No. 2046, chapter 48.

SECTION 24. 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 foreign or domestic limited liability company or foreign or domestic corporation that acquires in an exchange the shares of a domestic or foreign corporation or the membership interests of a limited liability company.
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, and articles of termination.
 - b. In the case of a foreign limited liability company, the term includes all documents 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.
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.~~ 6. "Board" or "board of governors" means the board of governors of a limited liability company.
- ~~5.~~ 6. "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.
- ~~6.~~ 7. "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 of ~~governors~~ or the members.
- ~~7.~~ 8. "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.
- ~~8.~~ 9. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.
- ~~9.~~ 10. "Constituent organization" means a limited liability company or a domestic or foreign corporation 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.
- ~~40.~~ 11. "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.
12. "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.
- ~~44.~~ 13. "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.

- ~~42.~~ 14. "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.
- ~~43.~~ 15. "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.
- ~~44.~~ 16. "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 members in respect of membership interests. A distribution 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.
- ~~45.~~ 17. "Domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by chapter 10-19.1.
- ~~46.~~ 18. "Domestic organization" means an organization created under the laws of this state.
19. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
20. "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.
21. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
22. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
23. "Filed with the secretary of state" means except as otherwise permitted by law or rule:

- a. That ~~either of the following~~ a document 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:
- (1) ~~A signed original or a legible facsimile telecommunication of a signed original of a request for reserved name; or~~
 - (2) ~~A signed original of all other documents, meeting the applicable requirements of this chapter, together with the fees provided in section 10-32-150.~~
- b. That the secretary of state shall then:
- (1) ~~Endorse on the original Record the word "filed" and the month, day, and year actual date on which the document is filed, and if different, the effective date of filing; and~~
 - (2) Record the document in the office of the secretary of state.
- ~~17.~~ 24. "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.
- ~~18.~~ 25. "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.
- ~~19.~~ 26. "Foreign limited liability company" means a limited liability company organized for profit which is organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under this chapter.
- ~~20.~~ 27. "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.
28. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.
- ~~21.~~ 29. "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.
- ~~22.~~ 30. "Governing board" means:

- a. The board of governors in the case of a limited liability company; and
 - b. The board of directors in the case of a corporation.
- ~~23.~~ 31. "Governor" means an individual serving on the board ~~of governors~~.
- ~~24.~~ 32. "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:
- 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.
- ~~25.~~ 33. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
- ~~26.~~ 34. "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.
- ~~27.~~ 35. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under this chapter.
- ~~28.~~ 36. "Manager" means:
- a. An individual who is eighteen years of age or more and who is elected, appointed, or otherwise designated as a manager by the board ~~of governors~~; and
 - b. An individual considered elected as a manager pursuant to section 10-32-92.
- ~~29.~~ 37. "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.
- ~~30.~~ 38. "Membership interest" means one of the units, however designated, into which a member's proprietary interest in a limited liability company is divided consisting of:
- a. A member's financial rights;
 - b. A member's right to assign financial rights as provided in section 10-32-31;
 - c. A member's governance rights, if any; and

- d. A member's right to assign any governance rights owned as provided in section 10-32-32.

~~34.~~ 39. "Notice" is:

a. Is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company ~~when:~~

(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.

~~a.~~ b. ~~In all other cases, notice is~~ Is given to a person, 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; ~~or~~

(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.

~~b.~~ c. Notice by mail is ~~is~~ given by mail when deposited in the United States mail with sufficient postage affixed.

~~e.~~ d. ~~Notice is considered~~ is deemed received when it is given.

~~32.~~ 40. "Organization" means, ~~whether~~

a. Whether domestic or foreign, a limited liability company, corporation, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; 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.

~~33.~~ 41. "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.

~~34.~~ 42. "Ownership interests" means:

a. Membership interests in the case of a limited liability company or a nonprofit corporation; and

b. Shares in the case of a corporation.

~~35.~~ 43. "Parent" of a specified limited liability company means a limited liability company or corporation that directly or indirectly, through related organizations, owns more than fifty percent of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.

~~36.~~ 44. "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.

~~37.~~ 45. "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.

~~38.~~ 46. "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.

47. "Registered office" means the place in this state designated in the articles as the registered office of the limited liability company.

~~39.~~ 48. "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.

~~40.~~ 49. "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.

50. "Required records" are those records required to be maintained under section 10-32-51.
41. ~~51.~~ "Security" has the meaning given ~~it~~ in ~~subsection 13~~ of section 10-04-02.
42. ~~52.~~ "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.
43. ~~53.~~ "Signed" means:
- a. ~~That the signature of a person has been, 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 document, is placed on a document, as provided in subsection 39 of under section 41-01-11, and, with 41-01-09.~~
 - b. With respect to a document:
 - a. ~~Required~~ required by this chapter to be filed with the secretary of state, ~~means the that:~~
 - (1) The document 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
 - b. ~~Not required by this chapter to be filed with the secretary of state, the signature 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 document.~~
 - (2) The signature and the document are communicated by a method or medium acceptable by the secretary of state.
44. ~~54.~~ "Subsidiary" of a specified limited liability company means:
- a. A 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 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.

- 45- 55. "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.
- 46- 56. "Surviving organization" means the foreign or domestic limited liability company or domestic or foreign corporation resulting from a merger.
- 47- 57. "Termination" means the end of a limited liability company's existence 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. ~~Is considered~~ 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.
- 48- 58. "Vote" includes authorization by written action.
- 49- 59. "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.
- 50- 60. "Written action" means a:
- a. A written document signed by every person required to take the action described; and ~~the~~
 - b. The counterparts of a written document signed by any person taking the action described.
 - (1) Each counterpart constitutes the action of the persons signing it; and ~~all~~
 - (2) All the counterparts, taken together, constitute one written action by all of the persons signing them.

SECTION 25. Section 10-32-02.1 of the North Dakota Century Code is created and enacted as follows:

10-32-02.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 26. AMENDMENT. Subsections 2, 3, and 4 of section 10-32-07 of the North Dakota Century Code are amended and reenacted as follows:

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:
 - 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 of ~~governors~~ as provided in 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 of ~~governors~~ as provided in section 10-32-83;
 - f. A written action by the board of ~~governors~~ 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 of ~~governors~~ 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 of ~~governors~~ 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 if this chapter requires the affirmative vote of 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 ~~of governors~~ 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 ~~of governors~~ vacancies as provided in section 10-32-79;

- e. If the board of ~~governors~~ 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 of ~~governors~~ 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 of ~~governors~~ is a quorum for a board meeting as provided in section 10-32-82;
- h. A committee consists 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;
- 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 of ~~governors~~ 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 of ~~governors~~ 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 of ~~governors~~ 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 of ~~governors~~ 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 of ~~governors~~ 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 ~~of governors~~ 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 ~~of governors~~ 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 ~~of governors~~ action as provided in section 10-32-83;
 - h. Authority to sign and deliver certain documents 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 dissenter 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.

SECTION 27. AMENDMENT. Subsection 5 of section 10-32-10 of the North Dakota Century Code is amended and reenacted as follows:

- 5. A limited liability company that is ~~merged~~ the surviving organization in a merger with another limited liability company or domestic or foreign corporation, or that is organized by the reorganization of one or more limited liability companies or domestic or foreign corporations other organizations, or that acquires by sale, lease, or other disposition to or exchange with a ~~limited liability company~~ an organization all or substantially all of the assets of another ~~limited liability company or domestic or foreign corporation~~ 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 limited liability companies or domestic or foreign corporations organizations, if the ~~other limited liability company or domestic or foreign corporation~~ organization whose name is sought to be used:
 - a. Was organized ~~or~~ 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, 45-10.1-03, 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.

SECTION 28. AMENDMENT. Section 10-32-11 of the North Dakota Century Code is amended and reenacted as follows:

10-32-11. Reserved name.

- 1. The exclusive right to the use of a limited liability company name otherwise permitted by section 10-32-10 may be reserved by any person.
- 2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 10-32-150.
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.

- b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 10-32-150.
4. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation together with the fees provided in section 10-32-150.
5. ~~The secretary of state may accept for filing a legible facsimile telecommunication of the signed original of any request for reserved name.~~
6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 29. AMENDMENT. Subsection 1 of section 10-32-13 of the North Dakota Century Code is amended and reenacted as follows:

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 of ~~governors~~.

SECTION 30. AMENDMENT. Section 10-32-15 of the North Dakota Century Code is amended and reenacted as follows:

10-32-15. Procedure for amendment before contribution. Before any contribution is reflected in the required records of a limited liability company, the articles of organization may be amended pursuant to section 10-32-67 by the organizers or by the board of ~~governors~~. The articles of organization may also be

amended by the board ~~of governors~~ to change or cancel a statement pursuant to subsection 6 of section 10-32-56 establishing or fixing the rights and preferences of a class or series of membership interests before any contribution pertaining to that class or series is reflected in the required records of the limited liability company by filing articles of amendment or a statement of cancellation, as appropriate, with the secretary of state.

SECTION 31. AMENDMENT. Subsection 6 of section 10-32-17 of the North Dakota Century Code is amended and reenacted as follows:

6. Divide the membership interests of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the membership interests of each series or authorize the board ~~of governors~~ to do so;

SECTION 32. AMENDMENT. Subsection 1 of section 10-32-22 of the North Dakota Century Code is amended and reenacted as follows:

1. Whenever a plan of reorganization of a limited liability company has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the limited liability company, pursuant to the provisions of any applicable statute of the United States relating to reorganization of limited liability companies, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and to put it into effect, so long as the articles as amended contain only provisions which might be lawfully contained in original articles of organization at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended to:
 - a. Change the limited liability company name, period of duration, or organizational purposes of the limited liability company.
 - b. Repeal, alter, or amend the bylaws of the limited liability company.
 - c. Change the preferences, limitations, relative rights in respect of all or any part of the membership interests of the limited liability company, and classify, reclassify, or cancel all or any part thereof.
 - d. Authorize the issuance of bonds, debentures, or other obligations of the limited liability company, whether convertible into membership interests of any class or bearing warrants or other evidence of optional rights to purchase or subscribe for membership interests of any class, and fix the terms and conditions thereof.
 - e. ~~Constitute or reconstitute and classify or reclassify the board of governors~~ and appoint governors and managers in place of or in addition to all or any of the governors or managers then in office.

SECTION 33. AMENDMENT. Subsection 17 of section 10-32-23 of the North Dakota Century Code is amended and reenacted as follows:

17. A limited liability company may establish committees of the board ~~of governors~~, elect or appoint persons to the committees, and define their duties as provided in section 10-32-85 and fix their compensation.

SECTION 34. AMENDMENT. Section 10-32-36 of the North Dakota Century Code is amended and reenacted as follows:

10-32-36. Sharing of profits and losses. Unless otherwise provided in the articles of organization, in a member-control agreement, or by the board of ~~governors~~ under subsections 5 and 6 of section 10-32-56, the profits and losses of a limited liability company must be allocated among the members, and among classes and series of members, in proportion to the value of the contributions of the members reflected in the required records.

SECTION 35. AMENDMENT. Section 10-32-37 of the North Dakota Century Code is amended and reenacted as follows:

10-32-37. Preemptive rights.

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 denied or limited in the articles of organization, in a member-control agreement, or by the board of ~~governors~~ pursuant to subdivision b of subsection 5 of section 10-32-56.
2. A preemptive right is the right of a member to make contributions of a certain amount or to make a contribution allowance agreement specifying future contributions of a certain amount before the limited liability company may accept new contributions from other persons or to make contribution allowance agreements with other persons.
3. A member has a preemptive right whenever the limited liability company proposes to accept contributions from other persons, or to make contribution allowance agreements with other persons, pertaining to membership interests of the same series or class as the series or class owned by the member.
4. Unless otherwise provided in the articles of organization or a member-control agreement, no preemptive rights pursuant to this section arise as to contributions to be accepted from others or as to contribution allowance agreements to be made with others when the contribution is:
 - a. To be made in a form other than money;
 - b. To be made or reflected pursuant to a plan of merger;
 - c. To be made or reflected pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote;
 - d. To be made pursuant to a previously made contribution allowance agreement; or
 - e. To be made or reflected pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.

5. The extent to which each member may make a new contribution, or obtain the right to make a new contribution under a contribution allowance agreement, by exercise of a preemptive right as to any class or series is the ratio that the value of that member's contributions, as reflected in the required records as pertaining to that class or series before the contribution, bears to the total value of all members' contributions reflected in the required records as pertaining to that class or series before the new contribution.
6. A member may waive a preemptive right in writing. The waiver is binding upon the member whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed contribution or contribution allowance agreement described in the waiver.
7. When proposing to accept new contributions, or to make contribution allowance agreements, with respect to which members have preemptive rights under this section, the board of ~~governors~~ shall cause notice to be given to each member entitled to preemptive rights. The notice must be given at least ten days before the date by which the member must exercise a preemptive right and must contain:
 - a. The extent of the member's preemptive right, being:
 - (1) In the case of a preemptive right to make a contribution, the amount of the contribution to be made; and
 - (2) In the case of a preemptive right to make a contribution allowance agreement, the amount of the contribution to be allowed under that contribution allowance agreement;
 - b. The method used to determine the extent of the member's preemptive right;
 - c. The terms and conditions upon which the member may make a contribution or make a contribution allowance agreement; and
 - d. The time within which and the method by which the member must exercise the right.
8. If a member does not exercise preemptive rights to make a contribution or to make a contribution allowance agreement, then for a period not exceeding one year after the date fixed by the board of ~~governors~~ for the exercise of those preemptive rights and to the extent of the preemptive rights not exercised, the board of ~~governors~~ may accept contributions or make contribution allowance agreements on terms no less favorable to the limited liability company than those offered to the member.
9. If the members of a limited liability company are entitled to cumulative voting in the election of governors, no amendment to the articles of organization or a member-control agreement which has the effect of denying, limiting, or modifying the preemptive rights provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of ~~governors~~ under cumulative voting are cast against the amendment.

10. A denial or limitation of preemptive rights otherwise provided in this section does not limit the power of a limited liability company to grant first refusal rights, contribution allowance rights, or other rights to make contributions to the limited liability company, to members, to persons who have entered into contribution agreements, or to other persons before accepting contributions or before making allowance agreements with any other person.

SECTION 36. AMENDMENT. Subsections 2 and 3 of section 10-32-38 of the North Dakota Century Code are amended and reenacted as follows:

2. If a regular meeting of members has not been held within the earlier of six months after the fiscal yearend of the corporation or fifteen months after its last meeting:
 - a. A member or members owning five percent or more of the voting power of all members entitled to vote may demand a regular meeting of members by written notice of demand given to the president or the secretary of the limited liability company.
 - b. Within thirty days after receipt of the demand by one of those managers, the board of ~~governors~~ shall cause a regular meeting of members to be called and held on notice no later than ninety days after receipt of the demand.
 - c. If the board of ~~governors~~ fails to cause a regular meeting to be called and held as required by this subsection, the member or members making the demand may call the regular meeting by giving notice as required by section 10-32-40.
 - d. All necessary expenses of the notice and the meeting must be paid by the limited liability company.
3. A regular meeting, if any, must be held on the date and at the time and place fixed by, or in a manner authorized by the articles, a member-control agreement, or the bylaws, except a meeting called by or at the demand of a member pursuant to subsection 2 must be held in the county where the principal executive office of the limited liability company is located. To the extent authorized in the articles, a member-control agreement, or the bylaws, the board may determine that a regular meeting of the members shall be held solely by means of remote communication in accordance with subdivision a of subsection 2 of section 10-32-43.2.

SECTION 37. AMENDMENT. Subsections 2 and 3 of section 10-32-39 of the North Dakota Century Code are amended and reenacted as follows:

2. A member or members owning ten percent or more of the voting power of all membership interests entitled to vote may demand a special meeting of members by written notice of demand given to the president or secretary of the limited liability company and containing the purposes of the meeting.
 - a. Within thirty days after receipt of the demand by one of those managers, the board of ~~governors~~ shall cause a special meeting of members to be called and held on notice no later than ninety days

- after receipt of the demand, all at the expense of the limited liability company.
- b. If the board ~~of governors~~ fails to cause a special meeting to be called and held as required by this subsection, the member or members making the demand may call the meeting by giving notice as required by section 10-32-40.
 - c. All necessary expenses of the notice and the meeting must be paid by the limited liability company.
3. Special meetings must be held on the date and at the time and place fixed by the president, the board ~~of governors~~, or a person authorized by the articles, a member-control agreement, or the bylaws to call a meeting, except a special meeting called by or at the demand of a member or members pursuant to subsection 2 must be held in the county where the principal executive office is located. To the extent authorized in the articles, a member-control agreement, or the bylaws, the board may determine that a special meeting of the members shall be held solely by means of remote communication in accordance with subdivision a of subsection 2 of section 10-32-43.2.

SECTION 38. AMENDMENT. Subsection 3 of section 10-32-40 of the North Dakota Century Code is amended and reenacted as follows:

3. The notice:
- a. In all instances when a specific minimum notice period has not otherwise been fixed by law, must be given at least ten days before the date of the meeting, or a shorter time provided in the articles of organization, a member-control agreement, or the bylaws, and not more than fifty days before the date of the meeting;
 - b. Must contain the date, time, and place of the meeting;
 - c. Must contain the information with respect to dissenters' rights required by subsection 2 of section 10-32-55, if applicable;
 - d. Must inform members if proxies are permitted at the meeting and, if so, state the procedure for appointing proxies;
 - e. Must contain a statement of the purpose of the meeting, in the case of a special meeting;
 - f. Must contain any other information:
 - (1) Required by the articles of organization, any member-control agreement, the bylaws, or this chapter; or
 - (2) Considered necessary or desirable by the board ~~of governors~~; and
 - g. May contain any other information considered necessary or desirable by the person or persons calling the meeting.

SECTION 39. AMENDMENT. Section 10-32-40.1 of the North Dakota Century Code is amended and reenacted as follows:

10-32-40.1. Voting rights.

1. The board ~~of governors~~ may fix or authorize a manager to fix a date not more than fifty days, or a shorter time period provided in the articles of organization, a member-control agreement, or the bylaws, before the date of a meeting of members as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members.
2. A determination of the owners of membership interests entitled to notice and to vote at a meeting of members is effective for an adjournment of the meeting unless the board ~~of governors~~ fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than fifty days after the record date for determining members entitled to notice of the original meeting.
3. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting:
 - a. It must provide the original record date for notice and voting continues in effect; or
 - b. It may fix a new record date for notice and voting.
4. A resolution approved by the affirmative vote of a majority of the governors present may establish a procedure whereby a member may certify in writing to the limited liability company that all or a portion of the membership interest registered in the name of the member are held for the account of one or more beneficial owners. Upon receipt by the limited liability company of the writing, the persons specified as beneficial owners, rather than the actual member, are deemed the members for the purposes specified in the writing.
5. Unless otherwise provided in the articles, in a member-control agreement, or by the board ~~of governors~~ under subsections 5 and 6 of section 10-32-56, members have voting power in proportion to the value of the contributions of the members as reflected in the required records.
6. The articles of organization or a member-control agreement may give or prescribe the manner of giving a creditor, securityholder, or other person a right to vote under this section.
7. Membership interests owned by two or more members may be voted by any one of them unless the limited liability company receives written notice from any one of them denying the authority of that person to vote those membership interests.
8. Except as provided in subsection 7, an owner of a membership interest entitled to vote may vote any portion of the membership interest in any way the member chooses. If a member votes without designating the proportion voted in a particular way, the member is considered to have voted all of the membership interest in that way.

SECTION 40. AMENDMENT. Section 10-32-43 of the North Dakota Century Code is amended and reenacted as follows:

10-32-43. Action without a meeting.

4. 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 ~~provided by~~ 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.
 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.
 - ~~3.~~
 - 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.
- ~~4.~~ 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 ~~that~~ if the action was taken under this section.

SECTION 41. AMENDMENT. Section 10-32-43.2 of the North Dakota Century Code is amended and reenacted as follows:

10-32-43.2. ~~Electronic Remote communications for member meetings.~~

1. This section shall be construed and applied to:
 - a. Facilitate remote communication consistent with other applicable law; and
 - b. Be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.
2. To the extent authorized in the articles, a member-control agreement or the bylaws, and determined by the board:
 - a. A ~~conference among~~ meeting of the members may be held solely by any combination of means of remote communication through which the participants may ~~simultaneously hear each other~~ during

participate in the conference constitutes a regular or special meeting of members if the same:

- (1) If notice of the meeting is given of the conference to every owner of membership interests entitled to vote as would be required by this chapter for a meeting; and
- (2) If the membership interests held by the members participating in the conference meeting would be sufficient to constitute a quorum at a meeting. Participation in a conference by this means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-32-48 are met.

2. b. A member may participate in not physically present in person or by proxy at a regular or special meeting of members not described in subsection 4 may by any means of remote communication through which the member, other participants, and all participants physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-32-48 are met, participate in a meeting of members held at a designated place.

3. In any meeting of members held solely by means of remote communication under subdivision a of subsection 2 or in any meeting of members held at a designated place in which one or more members participate by means of remote communication under subdivision b of subsection 2:

a. The limited liability company shall implement reasonable measures:

(1) To verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a member; and

(2) To provide each member participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:

(a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;

(b) If allowed by the procedures governing the meeting, have the member's remarks heard or read by other participants in the meeting opportunity to; and

(c) If otherwise entitled, vote on matters submitted to the members.

b. Participation in a meeting by this means constitutes presence at the meeting in person or by proxy of all if all of the other requirements of section 10-32-48 are met.

4. With respect to notice to members:

- a. Any notice to members given by the limited liability company under any provision of this chapter, the articles, a member-control agreement, or the bylaws by a form of electronic communication consent to by the member to whom the notice is given is effective when given. The notice is deemed given:
- (1) If by facsimile communication, when directed to a telephone number at which the member has consented to receive notice;
 - (2) If by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice;
 - (3) If by a posting on an electronic network on which the member has consented to receive notice, together with separate notice to the member of the specific posting, upon the later of:
 - (a) The posting; or
 - (b) The giving of the separate notice; and
 - (4) If by any other form of electronic communication by which the member has consented to receive notice, when directed to the member.
- b. An affidavit of the secretary, other authorized manager, or authorized agent of the limited liability company, 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.
- c. Consent by a member to notice given by electronic communication may be given in writing or by authenticated electronic communication. The limited liability company is entitled to rely on any consent so given until revoked by the member, provided that no revocation affects the validity of any notice given before receipt by the limited liability company of revocation of the consent.
5. Any ballot, vote authorization, or consent submitted by electronic communication under this chapter may be revoked by the member submitting the ballot, vote, authorization, or consent so long as the revocation is received by a manager of the limited liability company at or before the meeting or before an action without a meeting is effective according to section 10-32-43.
6. Waiver of notice by a member of a meeting by means of authenticated electronic communication ~~described in subsections 4 and 2~~ may be given in the manner provided in subsection 4 of section 10-32-40. Participation in a meeting by means of remote communication described in ~~subsections 4 and~~ subdivisions a and b of subsection 2 is a waiver of notice of that meeting, except when the member objects at:

- a. At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or objects before
- b. Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 42. AMENDMENT. Subsection 1 of section 10-32-48 of the North Dakota Century Code is amended and reenacted as follows:

1. A At or before the meeting at which the appointment is to be effective, a member may cast or authorize the casting of a vote by:
 - a. By filing with a manager authorized to tabulate votes a written appointment of a proxy with a manager of the limited liability company at or before the meeting at which the appointment is to be effective which is signed by the member.
 - a. A written appointment of a proxy may be signed by the member or authorized by the member by transmission of a telegram, cablegram, or other means of electronic transmission, provided the limited liability company has no reason to believe that the telegram, cablegram, or other electronic transmission was not authorized by the member.
 - b. By telephonic transmission or authenticated electronic communication to a manager authorized to tabulate votes, whether or not accompanied by written instructions of the member, of an appointment of a proxy.
 - (1) The telephonic transmission or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the appointment is authorized by the member. If it is reasonably concluded that the telephonic transmission or authenticated electronic communication is valid, the inspectors of election or, if there are not inspectors, the other persons making that determination of validity shall specify the information upon which they relied to make that determination.
 - (2) A proxy so appointed may vote on behalf of the member, or otherwise participate, in a meeting by remote communication according to section 10-32-43.2, to the extent the member appointing the proxy would have been entitled to participate by remote communication according to section 10-32-43.2 if the member did not appoint the proxy.
 - c. Any copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

- ~~e.~~ d. An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or ~~otherwise authorized~~ consented to by authenticated electronic communication by any one of ~~them~~ the members, unless the limited liability company receives from any one of those members written notice or an authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.

SECTION 43. AMENDMENT. Subsection 1 of section 10-32-50 of the North Dakota Century Code is amended and reenacted as follows:

1. A member-control agreement relating to any phase or aspect of the business and affairs of a limited liability company is valid as provided in subsection 2 and enforceable as provided in subsection 3.
 - a. A member-control agreement valid under subsection 2 may relate to, without limitation, the:
 - (1) Management of the limited liability company's business;
 - (2) Declaration and payment of distributions;
 - (3) Sharing of profits and losses;
 - (4) Election of governors or managers;
 - (5) Employment of members and others by the limited liability company;
 - (6) Relations among members and persons who have signed contribution agreements, including the termination of continued membership;
 - (7) Dissolution, termination, and liquidation of the limited liability company, including the continuation of the limited liability company's business through a successor organization or individual; and
 - (8) Arbitration of disputes.
 - b. If this chapter provides that a particular result may or must be obtained through a provision in the articles of organization, other than a provision required by subsection 1 of section 10-32-07 to be contained in the articles; in the bylaws; or by an act of the board, the same result may be accomplished through a member-control agreement valid under this section or through a procedure established by a member-control agreement valid under this section.
 - c. A member-control agreement may:
 - (1) Allocate to the members authority ordinarily exercised by the board ~~of governors~~;

- (2) Allocate to the board ~~of governors~~ authority ordinarily exercised by the members; or
- (3) Structure the governance of the limited liability company in any agreed fashion and may waive, in whole or in part, a member's dissenting rights under sections 10-32-54 and 10-32-55.

SECTION 44. AMENDMENT. Section 10-32-51 of the North Dakota Century Code is amended and reenacted as follows:

10-32-51. Required records and information.

1. A limited liability company shall keep at its principal executive office, or at another place or places within the United States determined by the board ~~of governors~~:
 - a. A current list of the full name and last-known business, residence, or mailing address of each member, each governor, and the president;
 - b. A current list of the full name and last-known business, residence, or mailing address of each assignee of financial rights other than a secured party and a description of the rights assigned;
 - c. A copy of the articles of organization and all amendments to the articles;
 - d. Copies of any currently effective written bylaws;
 - e. Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years;
 - f. Financial statements required by section 10-32-52;
 - g. Records of all proceedings of members for the last three years;
 - h. Records of all proceedings of the board ~~of governors~~ for the last three years;
 - i. Reports made to members generally within the last three years;
 - j. Member-control agreements described in section 10-32-50;
 - k. A statement of all contributions accepted under subsection 3 of section 10-32-56 including for each contribution:
 - (1) The identity of the member to whom the contribution relates;
 - (2) The class or series to which the contribution pertains;
 - (3) The amount of cash accepted by the limited liability company or promised to be paid to the limited liability company;

- (4) A description of any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company; and
 - (5) The value accorded under subsection 4 of section 10-32-56 to:
 - (a) Any other property transferred or promised to be transferred to the limited liability company; and
 - (b) Any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company;
 - l. A statement of all contribution agreements made under section 10-32-58, including for each contribution agreement:
 - (1) The identity of the would-be contributor;
 - (2) The class or series to which the future contribution pertains; and
 - (3) As to each future contribution to be made, the same information as subdivision k requires for contributions already accepted;
 - m. A statement of all contribution allowance agreements made under section 10-32-59, including for each contribution allowance agreement:
 - (1) The identity of the would-be contributor;
 - (2) The class or series to which the future contribution would pertain; and
 - (3) As to each future contribution allowed to be made, the same information as subdivision k requires for contributions already accepted;
 - n. An explanation of any restatement of value made under section 10-32-57;
 - o. Any written consents obtained from members under this chapter; and
 - p. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsections 6 through 8 of section 10-32-56.
2. A member of a limited liability company has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the limited liability company shall make available within ten days after receipt by a manager of the limited liability company of the written demand, all documents referred to in subsection 1.

3. A member of a limited liability company who has been a member for at least six months immediately preceding the member's demand or who is the holder of record of at least five percent of all membership interests of the limited liability company has a right, upon written demand, to examine and copy, in person or by a legal representative, other limited liability company records at any reasonable time only if the member demonstrates a proper purpose for the examination. A "proper purpose" is one reasonably related to the person's interest as a member of a limited liability company.
4. On application of the limited liability company, a court in this state may issue a protective order permitting the limited liability company to withhold portions of the records of proceedings of the board of ~~governors~~ for a reasonable period of time, not to exceed twelve months, in order to prevent premature disclosure of confidential information that would be likely to cause competitive injury to the limited liability company. A protective order may be renewed for successive reasonable periods of time, each not to exceed twelve months and in total not to exceed thirty-six months, for good cause shown. In the event a protective order is issued, the statute of limitations for any action that the member might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the limited liability company, it shall award reasonable expenses, including attorney's fees and disbursements, to the member. This subsection does not limit the right of a court to grant other protective orders or impose other reasonable restrictions on the nature of the limited liability company records that may be copied or examined under subsections 2 and 3 or the use or distribution of the records by the demanding member.
5. A member who has gained access under this section to any limited liability company record may not use or furnish to another for use the limited liability company record or a portion of the contents for any purpose other than a proper purpose. Upon application of the limited liability company, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subsection.
6. Copies of the information referred to in subsection 1 must be furnished at the expense of the limited liability company. In all other cases, the limited liability company may charge the requesting party a reasonable fee to cover the expenses of providing the copy.
7. The records maintained by a limited liability company may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or microimages, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A limited liability company shall convert any of the records referred to in subsections 2 and 3 upon the request of a person entitled to inspect them, and the expense of the conversion must be borne by the person who bears the expense of copying pursuant to subsection 6. A copy of the conversion is admissible in evidence, and is acceptable for all other purposes, to

the same extent as the existing or original records would be if they were legible visually.

SECTION 45. AMENDMENT. Subsection 1 of section 10-32-54 of the North Dakota Century Code is amended and reenacted as follows:

1. Subject to a member-control agreement under section 10-32-50, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:
 - a. An amendment of the articles of organization, but not an amendment to a member-control agreement, which materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:
 - (1) Alters or abolishes a preferential right of the membership interests;
 - (2) Creates, alters, or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests;
 - (3) Alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;
 - (4) Excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;
 - (5) Changes a member's right to resign or retire; or
 - (6) Establishes or changes the conditions for or consequences of expulsion;
 - b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company, but not including a transaction permitted without member approval under section 10-32-108, a disposition in dissolution described in subsection 4 of section 10-32-113, a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with the member's respective membership interests within one year after the date of disposition;
 - c. A plan of merger to which the limited liability company is a constituent organization;
 - d. A plan of exchange to which the limited liability company is a constituent organization as the organization whose ownership interests will be acquired by the acquiring organization, if the membership interests being acquired are entitled to be voted on the plan; or

- e. Any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, a member-control agreement, the bylaws, or a resolution approved by the board of ~~governors~~ directs that dissenting members may obtain payment for the dissenting members' membership interests.

SECTION 46. AMENDMENT. Subsection 4 of section 10-32-55 of the North Dakota Century Code is amended and reenacted as follows:

4. After the proposed action is approved by the board of ~~governors~~ and, if necessary, the members, the limited liability company shall send to all members who complied with subsection 3 and to all members entitled to dissent if no member vote was required, a notice that contains:
 - a. The address to which a demand for payment must be sent in order to obtain payment and the date by which the demand must be received;
 - b. A form to be used to certify the date on which the member acquired the membership interests and to demand payment; and
 - c. A copy of section 10-32-54 and this section.

SECTION 47. AMENDMENT. Section 10-32-56 of the North Dakota Century Code is amended and reenacted as follows:

10-32-56. Authorization, form, and acceptance of contributions.

1. Subject to any restrictions in the articles of organization or a member-control agreement and only when authorized by the board of ~~governors~~ or pursuant to a member-control agreement, a limited liability company may accept contributions under subsections 2 and 3, make contribution agreements under section 10-32-58, and make contribution allowance agreements under section 10-32-59.
2. ~~A person may make a contribution to a limited liability company by paying money or transferring the ownership of an interest in property to the limited liability company for rendering services to or for the benefit of the~~ Subject to subsection 3, a person may make a contribution to a limited liability company.
3. No purported contribution is to be treated or considered as a contribution, unless:
 - a. The board of ~~governors~~ accepts the contribution on behalf of the limited liability company and in that acceptance describes the contribution and states the value being accorded to the contribution; and
 - b. The fact of contribution and the contribution's accorded value are both reflected in the required records of the limited liability company.
4. The determinations of the board of ~~governors~~ as to the amount or fair value or the fairness to the limited liability company of the contribution accepted or to be accepted by the limited liability company or the terms

of payment or performance, including under a contribution agreement in section 10-32-58, and a contribution allowance agreement in section 10-32-59, 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. Governors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the limited liability company, or overvalue property or services received or to be received by the limited liability company as a contribution, are jointly and severally liable to the limited liability company for the benefit of the then members who did not consent to and are damaged by the action, to the extent of the damages of those members. A governor against whom a claim is asserted pursuant to this subsection, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other governors who are liable under this subsection.

5. All the membership interests of a limited liability company must:
 - a. Be of one class, without series, unless a member-control agreement or the articles of organization establish, or authorize the board of ~~governors~~ to establish, more than one class or series within classes;
 - b. Be ordinary membership interests entitled to vote as provided in section 10-32-40.1, and have equal rights and preferences in all matters not otherwise provided for by the board of ~~governors~~ unless and to the extent the articles of organization or a member-control agreement fixes the relative rights and preferences of different classes and series; and
 - c. Share profits and losses as provided in section 10-32-36 and be entitled to distributions as provided in sections 10-32-60 and 10-32-61 and subdivision c of subsection 1 of section 10-32-131.
6. Subject to any restrictions in the articles of organization or a member-control agreement, the power granted in subsection 5 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series established in the articles of organization, in a member-control agreement, or by resolution of the board of ~~governors~~.
7. A statement signed by a manager setting forth the name of the limited liability company and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed with the secretary of state together with the fees provided in section 10-32-150 before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles of organization or a member-control agreement. The resolution is effective when the statement has been filed with the secretary of state unless the statement specifies a later effective date within thirty days of filing the statement with the secretary of state.

8. Without limiting the authority granted in this section, a limited liability company may have membership interests of a class or series:
 - a. Subject to the right of the limited liability company to redeem any of those membership interests at the price fixed for their redemption by the articles of organization or by the board ~~of governors~~;
 - b. Entitling the members to cumulative, partially cumulative, or noncumulative distributions;
 - c. Having preference over any class or series of membership interests for the payment of distributions of any or all kinds;
 - d. Convertible into membership interests of any other class or any series of the same or another class; or
 - e. Having full, partial, or no voting rights, except as provided in section 10-32-17.

SECTION 48. AMENDMENT. Subsection 2 of section 10-32-57 of the North Dakota Century Code is amended and reenacted as follows:

2. Whenever a limited liability company accepts a new contribution, the board ~~of governors~~ shall restate, as required by this section, the value of all old contributions.

SECTION 49. AMENDMENT. Subsection 3 of section 10-32-58 of the North Dakota Century Code is amended and reenacted as follows:

3. A contribution agreement, whether made before or after the formation of a limited liability company, must be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times determined by the board ~~of governors~~, but a call made by the board ~~of governors~~ for payment or performance on contributions must be uniform for all membership interests of the same class or for all membership interests of the same series.

SECTION 50. AMENDMENT. Subsection 1 of section 10-32-59 of the North Dakota Century Code is amended and reenacted as follows:

1. Subject to any restrictions in the articles of organization or a member-control agreement, a limited liability company may enter into contribution allowance agreements under the terms, provisions, and conditions fixed by the board ~~of governors~~ or by a manager pursuant to board authorization.

SECTION 51. AMENDMENT. Section 10-32-60 of the North Dakota Century Code is amended and reenacted as follows:

10-32-60. Sharing of distributions. Unless otherwise provided in the articles of organization, in a member-control agreement, or by the board ~~of governors~~ under subsections 5 through 7 of section 10-32-56, distributions of cash or other assets of a limited liability company, including distributions on termination of the

limited liability company, must be allocated in proportion to the value of the contributions of the members reflected in the required records.

SECTION 52. AMENDMENT. Section 10-32-61 of the North Dakota Century Code is amended and reenacted as follows:

10-32-61. Interim distributions. Except as provided in the articles of organization or a member-control agreement, a member is entitled to receive distributions before the limited liability company's termination only as specified in the bylaws or by the act of the board of ~~governors~~.

SECTION 53. AMENDMENT. Subsection 1 of section 10-32-64 of the North Dakota Century Code is amended and reenacted as follows:

1. The board of ~~governors~~ may authorize and cause the limited liability company to make a distribution only if the board of ~~governors~~ determines, in accordance with subsection 2, that the limited liability company will be able to pay its debts in the ordinary course of business after making the distribution and the board of ~~governors~~ does not know before the distribution is made that the determination was or has become erroneous.
 - a. The limited liability company may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.
 - b. The effect of a distribution on the ability of the limited liability company to pay its debts in the ordinary course of business after making the distribution must be measured in accordance with subsection 3.
 - c. The right of the board of ~~governors~~ to authorize, and the limited liability company to make, distributions may be, prohibited, limited, or restricted by the articles of organization, a member-control agreement, the bylaws, or an agreement.

SECTION 54. AMENDMENT. Section 10-32-67 of the North Dakota Century Code is amended and reenacted as follows:

10-32-67. Organization.

1. If the first board of ~~governors~~ is not named in the articles of organization, the organizers may elect the first board of ~~governors~~ or may act as governors with all of the powers, rights, duties, and liabilities of governors, until governors are elected or until a contribution is accepted, whichever occurs first.
2. After the issuance of the certificate of organization, the organizers or the governors named in the articles of organization shall hold an organizational meeting at the call of a majority of the organizers or of the governors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the limited liability company, including, without limitation, amending the articles, electing governors, adopting the bylaws, electing managers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of

suitable space, furniture, furnishings, supplies, and materials, approving a limited liability company seal, adopting a fiscal year for the limited liability company, contracting to receive and accept contributions, and making any appropriate tax elections.

- a. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each organizer or governor named, stating the date, time, and place of the meeting.
- b. Organizers and governors may waive notice of an organizational meeting in the same manner a governor may waive notice of meetings of the board of ~~governors~~ under subsection 5 of section 10-32-80.

SECTION 55. AMENDMENT. Subsections 2 and 3 of section 10-32-68 of the North Dakota Century Code are amended and reenacted as follows:

2. Initial bylaws may be adopted pursuant to section 10-32-67 by the organizers or by the first board of ~~governors~~. Unless reserved by the articles of organization or a member-control agreement to the members, the power to adopt, amend, or repeal the bylaws is vested in the board of ~~governors~~. The power of the board of ~~governors~~ is subject to the power of the members, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal the bylaws adopted, amended, or repealed by the board of ~~governors~~. ~~After the adoption of the initial bylaws, the board of governors may not adopt, amend, or repeal a bylaw provision fixing a quorum for meetings of members, prescribing procedures for removing governors or filling vacancies in the board of governors, or fixing the number of governors or the governors' classifications, qualifications, or terms of office, but may adopt or amend a bylaw provision to increase the number of governors.~~
3. Unless the articles or bylaws provide otherwise, members owning five percent or more of the voting power of the members entitled to vote may propose a resolution for action by the members to adopt, amend, or repeal the bylaws adopted, amended, or repealed by the board of ~~governors~~ and the resolution must set forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2 through 4 of section 10-32-16, for amendment of the articles of organization. The articles or bylaws may impose different or additional requirements for the members to adopt, amend, or repeal the bylaws.

SECTION 56. AMENDMENT. Section 10-32-69 of the North Dakota Century Code is amended and reenacted as follows:

10-32-69. Board of ~~governors~~.

1. The business and affairs of a limited liability company are to be managed by or under the direction of a board of ~~governors~~, subject to the provisions of subsection 2 and section 10-32-50. The first board of ~~governors~~ may be named in the articles of organization or in a member-control agreement or may be elected by the organizers pursuant to section 10-32-67 or by the members.

2. The owners of the membership interests entitled to vote for governors of the limited liability company may, by unanimous affirmative vote, take any action that this chapter requires or permits the board of ~~governors~~ to take. As to an action taken by the members in that manner:
 - a. The governors have no duties, liabilities, or responsibilities as governors under this chapter with respect to or arising from the action;
 - b. The members collectively and individually have all of the duties, liabilities, and responsibilities of governors under this chapter with respect to and arising from the action;
 - c. If the action relates to a matter required or permitted by this chapter or by any other law to be approved or adopted by the board of ~~governors~~, either with or without approval or adoption by the members, the action is considered to have been approved or adopted by the board of ~~governors~~; and
 - d. A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board of ~~governors~~ is satisfied by a statement that the members have taken the action under this subsection.

SECTION 57. AMENDMENT. Section 10-32-70 of the North Dakota Century Code is amended and reenacted as follows:

10-32-70. Number. The board of ~~governors~~ consists of one or more governors. The number of governors must be fixed by or in the manner provided in the articles of organization, a member-control agreement, or the bylaws. The number of governors may be increased or, subject to section 10-32-78, decreased at any time by amendment to or in the manner provided in the articles, a member-control agreement, or the bylaws.

SECTION 58. AMENDMENT. Section 10-32-73 of the North Dakota Century Code is amended and reenacted as follows:

10-32-73. Acts not void or voidable. The expiration of a governor's term with or without the election of a qualified successor does not make prior or subsequent acts of the governors or the board of ~~governors~~ void or voidable.

SECTION 59. AMENDMENT. Section 10-32-74 of the North Dakota Century Code is amended and reenacted as follows:

10-32-74. Compensation. Subject to any limitations in the articles, a member-control agreement, or the bylaws, the board of ~~governors~~ may fix the compensation of governors.

SECTION 60. AMENDMENT. Subsection 2 of section 10-32-76 of the North Dakota Century Code is amended and reenacted as follows:

2. An amendment to the articles, a member-control agreement, or the bylaws which has the effect of denying, limiting, or modifying the right to cumulative voting for members provided in this section may not be adopted if the votes of a proportion of the voting power sufficient to elect

a governor at an election of the entire board of ~~governors~~ under cumulative voting are cast against the amendment.

SECTION 61. AMENDMENT. Subsection 2 of section 10-32-77 of the North Dakota Century Code is amended and reenacted as follows:

2. If a resignation is made effective at a later time, the board may fill the pending vacancy before the effective time if the board of ~~governors~~ provides that the successor does not take office until the effective time.

SECTION 62. AMENDMENT. Subsections 2 and 3 of section 10-32-78 of the North Dakota Century Code are amended and reenacted as follows:

2. A governor may be removed at any time, with or without cause, if:
 - a. The governor was named by the board of ~~governors~~ to fill a vacancy;
 - b. The members have not elected governors 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 governors present affirmatively votes to remove the governor.
3. Any one or all of the governors may be removed at any time, with or without cause, by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote at an election of governors.
 - a. If less than the entire board of ~~governors~~ is to be removed, no one of the governors may be removed if the votes cast against the governor's removal which, if then cumulatively voted at the election of the entire board of ~~governors~~, or if there be classes of governors at an election of the class of governors of which the governor is a part, would be sufficient to elect the governor.
 - b. If a governor has been elected solely by the holders of a class or series of membership interests as stated in the articles, any member-control agreement, or the bylaws, then that governor may be removed only by the affirmative vote of the holders of a majority of the voting power of all membership interests of that class or series entitled to vote at an election of that governor.

SECTION 63. AMENDMENT. Subsection 2 of section 10-32-78.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The court that removes a governor may bar the governor from serving on the board of ~~governors~~ for a period prescribed by the court.

SECTION 64. AMENDMENT. Subsection 1 of section 10-32-79 of the North Dakota Century Code is amended and reenacted as follows:

1. Unless different rules for filling vacancies are provided for in the articles, a member-control agreement, or the bylaws:

- a. Vacancies on the board of ~~governors~~ resulting from the death, resignation, removal, or disqualification of a governor may be filled by the affirmative vote of a majority of the remaining governors, even though less than a quorum; and
- b. Vacancies on the board of ~~governors~~ resulting from newly created governorships may be filled by the affirmative vote of a majority of the governors serving at the time of the increase.

SECTION 65. AMENDMENT. Section 10-32-80 of the North Dakota Century Code is amended and reenacted as follows:

10-32-80. Board of ~~governors~~ meetings.

1. Meetings of the board of ~~governors~~ may be held from time to time as provided in the articles of organization, a member-control agreement, or the bylaws at any place within or without the state that the board of ~~governors~~ may select or by any means described in subsection 2.
 - a. If the articles, bylaws, or board of ~~governors~~ fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles, a member-control agreement, or the bylaws provide otherwise.
 - b. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.
 - c. Participation in a meeting by either of the means set forth in subdivision 2 constitutes personal presence at the meeting.
2. ~~A board of governors~~ Any meeting among governors may be conducted by:
 - a. ~~A conference among governors using~~ Solely by any one or more means of remote communication through which all of the governors may simultaneously hear participate with each other during the conference constitutes a board of governors meeting; if:
 - (1) If the same notice is given of the conference meeting as would be required by subsection 3 for a meeting; and if
 - (2) If the number of governors participating in the conference meeting is a quorum at a meeting. Participation in a meeting by this means constitutes personal presence at the meeting;
or
 - b. By any means of conference telephone or, if authorized by the board, by such other means of remote communication, in each case, through which the governor, other governors so participating, and all governors physically present at the meeting may simultaneously hear participate with each other during the meeting. Participation in a meeting by this means constitutes personal presence at the meeting.
3. Unless the articles of organization, a member-control agreement, or the bylaws provide for a different time period, a governor may call a board

meeting by giving at least ten days' notice or, in the case of organizational meetings under subsection 2 of section 10-32-67, at least three days' notice to all governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles, a member-control agreement, or the bylaws otherwise require.

4. If the date, time, and place of a board ~~of governors~~ meeting are provided in the articles, a member-control agreement, or the bylaws, or announced at a previous meeting of the board ~~of governors~~, notice is not required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.
5. A governor may waive notice of a meeting of the board ~~of governors~~. A waiver of notice by a governor entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a governor at a meeting is a waiver of notice of that meeting, except when the governor objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

SECTION 66. AMENDMENT. Section 10-32-81 of the North Dakota Century Code is amended and reenacted as follows:

10-32-81. Absent governors. If the articles of organization, a member-control agreement, or the bylaws so provide, a governor may give advance written consent or opposition to a proposal to be acted on at a board ~~of governors~~ meeting. If the governor is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as the vote of a governor present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting; if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the governor has consented or objected.

SECTION 67. AMENDMENT. Section 10-32-83 of the North Dakota Century Code is amended and reenacted as follows:

10-32-83. Act of the board ~~of governors~~. The board ~~of governors~~ shall take action by the affirmative vote of the greater of a majority of governors present at a duly held meeting at the time the action is taken or a majority of the minimum proportion or number of governors that would constitute a quorum for the transaction of business at a meeting, except if this chapter, a member-control agreement, or the articles require the affirmative vote of a larger proportion or number. If a member-control agreement or the articles require a larger proportion or number than is required by this chapter for a particular action, the member-control agreement or the articles control.

SECTION 68. AMENDMENT. Subsections 1 and 2 of section 10-32-84 of the North Dakota Century Code are amended and reenacted as follows:

1. An action required or permitted to be taken at a board ~~of governors~~ meeting may be taken by written action signed, or consented to by authenticated electronic communication, by all of the governors. If the articles or a member-control agreement so provide, any action, other

than an action requiring member approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of governors which would be required to take the same action at a meeting of the board ~~of governors~~ at which all governors were present.

2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required number of governors, unless a different effective time is provided in the written action.

SECTION 69. AMENDMENT. Subsections 1 and 3 of section 10-32-85 of the North Dakota Century Code are amended and reenacted as follows:

1. A resolution approved by the affirmative vote of a majority of the board ~~of governors~~ may establish committees having the authority of the board in the management of the business of the limited liability company only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent governors or other independent persons to consider legal rights or remedies of the limited liability company and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board ~~of governors~~.
3. Sections 10-32-80 through 10-32-84 apply to committees and members of committees to the same extent as those sections apply to the board ~~of governors~~ and governors.

SECTION 70. AMENDMENT. Subsections 2 and 4 of section 10-32-86 of the North Dakota Century Code are amended and reenacted as follows:

2. A governor is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
 - a. One or more managers or employees of the limited liability company whom the governor reasonably believes to be reliable and competent in the matters presented;
 - b. Counsel, public accountants, or other persons as to matters that the governor reasonably believes are within the person's professional or expert competence; or
 - c. A committee of the board ~~of governors~~ upon which the governor does not serve, duly established in accordance with section 10-32-85, as to matters within its designated authority, if the governor reasonably believes the committee to merit confidence.
4. A governor who is present at a meeting of the board ~~of governors~~ when an action is approved by the affirmative vote of a majority of the governors present is presumed to have assented to the action approved, unless the governor:
 - a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened

and does not participate in the meeting after the objection, in which case the governor is not considered to be present at the meeting for any purpose of this chapter;

- b. Votes against the action at the meeting; or
- c. Is prohibited from voting on the action by the articles; by the bylaws; as the result of the decision to approve, ratify, or authorize a transaction pursuant to section 10-32-87; or by a conflict of interest policy adopted by the board.

SECTION 71. AMENDMENT. Subsections 1 and 2 of section 10-32-87 of the North Dakota Century Code are amended and reenacted as follows:

1. A contract or other transaction between a limited liability company and one or more of its governors or a member of the family of the governor; a director of a related organization or a member of the family of a director of a related organization; or an organization in or of which the limited liability company's governor or a member of the family of the governor is a governor, director, manager, officer, or legal representative or has a material financial interest is not void or voidable because the governor or the other organization is a party or because the governor is present at the meeting of the members or the board ~~of governors~~ or a committee at which the contract or transaction is authorized, approved, or ratified, if at least one of the requirements of subsection 2 is satisfied.
2. The contract or transaction described in subsection 1 is not void or voidable if:
 - a. The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the limited liability company at the time it was authorized, approved, or ratified;
 - b. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the members, whether ~~or not~~ entitled to vote, and the contract or transaction is approved in good faith by:
 - (1) The owners of two-thirds of the voting power of membership interests entitled to vote which are owned by persons other than the interested governor; or
 - (2) The unanimous affirmative vote of all members, whether ~~or not~~ entitled to vote;
 - c. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the board ~~of governors~~ or a committee, and the board ~~of governors~~ or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board ~~of governors~~ or committee, but the interested governor is not counted in determining the presence of a quorum and may not vote; or

- d. The contract or transaction is a distribution described in subsection 1 of section 10-32-64 or a merger or exchange described in subsection 1 or 2 of section 10-32-100.

SECTION 72. AMENDMENT. Section 10-32-88 of the North Dakota Century Code is amended and reenacted as follows:

10-32-88. Managers. A limited liability company must consist of one or more individuals eighteen years of age or more, exercising the functions of the offices, however designated, of president and treasurer and may have one or more vice presidents and a secretary, as may be provided in the bylaws. Any other managers, assistant managers, and agents, as necessary, may be elected or appointed by the board of ~~governors~~ or chosen in such other manner as may be provided in the bylaws.

SECTION 73. AMENDMENT. Section 10-32-89 of the North Dakota Century Code is amended and reenacted as follows:

10-32-89. Duties of managers and agents. Unless otherwise provided by the articles of organization, a member-control agreement, the bylaws, or a resolution adopted by the board of ~~governors~~ which is not inconsistent with the articles, a member-control agreement, or the bylaws, the managers have the following duties:

1. The president shall:
 - a. Have general active management for the business of the limited liability company;
 - b. When present, preside at all meetings of the board of ~~governors~~ and of the members;
 - c. See that all orders and resolutions of the board of ~~governors~~ are carried into effect;
 - d. Sign and deliver in the name of the limited liability company any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the limited liability company, except if the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles, a member-control agreement, the bylaws, or the board of ~~governors~~ to some other manager or agent of the limited liability company;
 - e. Maintain records of and, whenever necessary, certify all proceedings of the board of ~~governors~~ and members; and
 - f. Perform other duties prescribed by the board of ~~governors~~.
2. The vice president, if any, or if there is more than one, the vice presidents in the order determined by the board of ~~governors~~ shall:
 - a. In the absence or disability of the president, perform the duties and exercise the powers of the president; and
 - b. Perform other duties and have other powers as the board of ~~governors~~ may from time to time prescribe.

3. The treasurer shall:
 - a. Keep accurate financial records for the limited liability company;
 - b. Deposit all money, drafts, and checks in the name of and to the credit of the limited liability company in the banks and depositories designated by the board of ~~governors~~;
 - c. Endorse for deposit all notes, checks, and drafts received by the limited liability company as ordered by the board of ~~governors~~, making proper vouchers for them;
 - d. Disburse limited liability company funds and issue checks and drafts in the name of the limited liability company, as ordered by the board of ~~governors~~;
 - e. Give to the president and the board of ~~governors~~, whenever requested, an account of all transactions by the treasurer and of the financial condition of the limited liability company; and
 - f. Perform other duties prescribed by the board of ~~governors~~ or by the president.
4. The secretary, if any, shall:
 - a. Attend all meetings of the board of ~~governors~~, all meetings of the members, and, when required, all meetings of standing committees;
 - b. Record all proceedings of the meetings;
 - c. Give, or cause to be given, notice of all meetings of the members and meetings of the board of ~~governors~~; and
 - d. Perform other duties prescribed by the board of ~~governors~~.
5. Any other managers and agents of the limited liability company, as between the managers and agents and the limited liability company, shall perform the duties in the management of the limited liability company as may be provided in the articles, a member-control agreement, or the bylaws, or as may be determined by resolution of the board not inconsistent with the articles, a member-control agreement, or the bylaws.

SECTION 74. AMENDMENT. Section 10-32-92 of the North Dakota Century Code is amended and reenacted as follows:

10-32-92. Managers deemed elected. In the absence of an election or appointment of managers by the board of ~~governors~~, the individual or individuals exercising the functions of the principal managers of the limited liability company are deemed to have been elected to those offices.

SECTION 75. AMENDMENT. Subsection 3 of section 10-32-94 of the North Dakota Century Code is amended and reenacted as follows:

3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause, may, or in the case of the president or treasurer, must be filled for the unexpired portion of the term in the manner provided in the articles, a member-control agreement, or the bylaws; in the manner determined by the board of ~~governors~~; or pursuant to section 10-32-92.

SECTION 76. AMENDMENT. Section 10-32-95 of the North Dakota Century Code is amended and reenacted as follows:

10-32-95. Delegation. Unless prohibited by the articles, a member-control agreement, the bylaws, or by a resolution adopted by the board of ~~governors~~, a manager elected or appointed by the board of ~~governors~~ may, without the approval of the board, delegate some or all of the duties and powers of an office to other individuals. A manager who delegates the duties or powers of an office remains subject to the standard of conduct for a manager with respect to the discharge of all duties and powers so delegated.

SECTION 77. AMENDMENT. Subsection 1 of section 10-32-97 of the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the governors present and:
 - a. Is in the usual and regular course of business of the limited liability company;
 - b. Is with, or for the benefit of, a related organization, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has a relationship in the usual and regular course of its business, or an organization to which the limited liability company has the power to make donations any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the limited liability company;
 - c. Is with, or for the benefit of, a member who provides services to the limited liability company, or a manager or other employee of the limited liability company or a subsidiary, including a member, manager, or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of ~~governors~~, to benefit the limited liability company; or
 - d. Whether or not separate consideration has been promised to the limited liability company, has been approved by the owners of two-thirds of the voting power of persons other than the interested person or persons.

SECTION 78. AMENDMENT. Section 10-32-99 of the North Dakota Century Code is amended and reenacted as follows:

10-32-99. Indemnification.

1. For purposes of this section:
 - a. "Limited liability company" includes a domestic or foreign limited liability company that was the predecessor of the limited liability company referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
 - b. "Official capacity" means:
 - (1) With respect to a governor, the position of governor in a limited liability company;
 - (2) With respect to a person other than a governor, the elective or appointive office or position held by a manager, member of a committee of the board of ~~governors~~, the employment relationship undertaken by an employee, agent of the limited liability company, or the scope of the services provided by members of the limited liability company who provide services to the limited liability company; and
 - (3) With respect to a governor, manager, member, employee, or agent of the limited liability company who, while a governor, manager, member, or employee of the limited liability company, is or was serving at the request of the limited liability company or whose duties in that position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.
 - c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the limited liability company.
 - d. "Special legal counsel" means counsel who has not represented the limited liability company or a related organization, or a governor, manager, member of a committee of the board of ~~governors~~, employee, or agent whose indemnification is in issue.
2. Subject to the provisions of subsection 5, a limited liability company shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

- a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;
 - b. Acted in good faith;
 - c. Received no improper personal benefit and section 10-32-87, if applicable, has been satisfied;
 - d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
 - e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the limited liability company, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the limited liability company. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the limited liability company if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.
3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in subsection 2.
 4. Subject to the provisions of subsection 5, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the limited liability company, to payment or reimbursement by the limited liability company of reasonable expenses, including attorney's fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:
 - a. Upon receipt by the limited liability company of a written affirmation by the person of a good-faith belief that the criteria for indemnification set forth in subsection 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the limited liability company, if it is ultimately determined that the criteria for indemnification have not been satisfied; and
 - b. After a determination that the facts then known to those making the determination would not preclude indemnification under this section.

The written undertaking required by subdivision a is an unlimited general obligation of the person making it, but need not be secured and must be accepted without reference to financial ability to make the repayment.

5. The articles of organization, a member-control agreement, or the bylaws may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2 through 4 including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring before the effective date of a provision in the articles of organization, or a member-control agreement, or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.
6. This section does not require, or limit the ability of, a limited liability company to reimburse expenses, including attorney's fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.
7. All indemnification determinations must be made:
 - a. By the board of ~~governors~~ by a majority of a quorum. Governors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum;
 - b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board of ~~governors~~, consisting solely of two or more governors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board of ~~governors~~, including governors who are parties;
 - c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board of ~~governors~~ or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board of ~~governors~~ cannot be obtained and the committee cannot be established, by a majority of the full board of ~~governors~~, including governors who are parties;
 - d. If a determination is not made under subdivisions a through c, by the affirmative vote of the members required by section 10-32-42, other than the members who are a party to the proceeding; or
 - e. If an adverse determination is made under subdivisions a through d or under subsection 8, or if no determination is made under subdivisions a through d or under subsection 8 within sixty days after the later to occur of the termination of a proceeding; or a written request for indemnification to the limited liability company; or a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon

application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

8. With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a governor, manager, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the limited liability company, the determination whether indemnification of this person is required because the criteria set forth in subsections 2 and 3 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 may be made by an annually appointed committee of the board of ~~governors~~, having at least one member who is a governor. The committee shall report at least annually to the board of ~~governors~~ concerning its actions.
9. A limited liability company may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the limited liability company would have been required to indemnify the person against the liability under the provisions of this section.
10. A limited liability company that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the limited liability company shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members as part of the annual financial statements furnished to members pursuant to section 10-32-52 covering the period when the indemnification or advance was paid or accrued under the accounting method of the limited liability company reflected in the financial statements.
11. This section does not limit the power of the limited liability company to indemnify persons other than a governor, a manager, a member, an employee, or a member of a committee of the board, by contract or otherwise.

SECTION 79. 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 parent owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary directly, or indirectly through related ~~corporations or limited liability companies~~ 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 ~~corporations or limited liability companies~~ 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 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 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. 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 10-19.1-98 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. A Notice of the action, including a copy of the plan of merger must be ~~mailed~~ 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 organizations; and
 - c. ~~The date a copy of the plan of merger was mailed to the owners, other than the parent, of each subsidiary that is a constituent organization in the merger; and~~
 - e. A statement that the plan of merger has been approved by the parent under this section.
7. ~~Within thirty days after a copy of the plan of merger is mailed to the owners of each subsidiary that is a constituent organization to the merger, or upon waiver of the mailing by the owners of all outstanding ownership interests of each subsidiary that is a constituent organization to the merger, the~~ 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, the owners of each domestic subsidiary have dissenter's 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. 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 dissenter's 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, that owner of the parent has dissenter's rights as provided under section 10-19.1-87 or under section 10-32-54. 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 80. AMENDMENT. Subsections 1 and 2 of section 10-32-108 of the North Dakota Century Code are amended and reenacted as follows:

1. A limited liability company may, by affirmative vote of a majority of the governors 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 of ~~governors~~ considers expedient, and without member approval:
 - 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 all of the shares of which are owned by a limited liability company.
2. A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its goodwill, 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 of ~~governors~~ considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company.

SECTION 81. AMENDMENT. Subsection 2 of section 10-32-112 of the North Dakota Century Code is amended and reenacted as follows:

2. When the notice of dissolution has been filed with the secretary of state, and subject to section 10-32-116, the limited liability company shall cease to carry on its business, except to the extent necessary for the winding up of the business of the limited liability company. The members shall retain the right to revoke the dissolution in accordance with section 10-32-116 and the right to remove governors or fill vacancies on the board of ~~governors~~. The limited liability company existence continues to the extent necessary to wind up the affairs of the limited liability company until the dissolution is revoked or articles of termination are filed with the secretary of state.

SECTION 82. AMENDMENT. Subsection 3 of section 10-32-113 of the North Dakota Century Code is amended and reenacted as follows:

3. When a notice of dissolution has been filed with the secretary of state, the board of ~~governors~~, or the managers acting under the direction of the board of ~~governors~~, shall proceed as soon as possible:
 - a. To give notice to creditors and claimants under section 10-32-114 or to proceed under section 10-32-115;
 - b. To collect or make provision for the collection of all known debts due or owing to the limited liability company, including unperformed contribution agreements; and
 - c. Except as provided in sections 10-32-114, 10-32-115, and 10-32-128, to pay or make provision for the payment of all known debts, obligations, and liabilities of the limited liability company according to their priorities under section 10-32-131.

SECTION 83. AMENDMENT. Subsection 1 of section 10-32-114 of the North Dakota Century Code is amended and reenacted as follows:

1. If notice to creditors and claimants is given, the notice must be given by publishing the notice once each week for four successive weeks in an official newspaper as defined in chapter 46-06 in the county or counties where the registered office and the principal executive office of the limited liability company are located and by giving written notice to known creditors and claimants pursuant to subsection ~~34~~ 39 of section 10-32-02.

SECTION 84. AMENDMENT. Subsections 2 and 3 of section 10-32-117 of the North Dakota Century Code are amended and reenacted as follows:

2. When the articles of termination have been filed with the secretary of state, or on a later date within thirty days after filing if the articles of termination so provide, the limited liability company is terminated.
3. The secretary of state shall issue to the ~~dissolved~~ limited liability company or its legal representative a certificate of termination that contains:
 - a. The name of the limited liability company;
 - b. The date the ~~articles of termination were filed with the secretary of state~~ is effective; and
 - c. A statement that the limited liability company is terminated on the effective date of termination.

SECTION 85. AMENDMENT. Subsection 1 of section 10-32-119 of the North Dakota Century Code is amended and reenacted as follows:

1. A court may grant any equitable relief it considers just and reasonable in the circumstances or may dissolve, wind up, and terminate a limited liability company:
 - a. In a supervised voluntary winding up and termination pursuant to section 10-32-118;

- b. In an action by a member when it is established that:
- (1) The governors or the persons having the authority otherwise vested in the board ~~of governors~~ are deadlocked in the management of the affairs of the limited liability company and the members are unable to break the deadlock;
 - (2) The governors or those in control of the limited liability company have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members or governors of any limited liability company or as managers or employees of a closely held limited liability company;
 - (3) The members of the limited liability company 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 governors whose terms have expired or would have expired upon the election and qualification of their successors;
 - (4) The limited liability company assets are being misapplied or wasted; or
 - (5) An event of dissolution has occurred under subdivision a, d, or e of subsection 1 of section 10-32-109 but the limited liability company is not acting to wind up its affairs;
- c. In an action by a creditor when:
- (1) The claim of the creditor has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or
 - (2) The limited liability company has admitted in writing that the claim of the creditor is due and owing and it is established that the limited liability company is unable to pay its debts in the ordinary course of business; or
- d. In an action by the attorney general to dissolve the limited liability company in accordance with section 10-32-122 when it is established that a decree of termination is appropriate.

SECTION 86. AMENDMENT. Subsection 2 of section 10-32-130.1 of the North Dakota Century Code is amended and reenacted as follows:

2. An amendment to the articles must be approved by the board ~~of governors~~ and must include:
 - a. The date the period of duration expired under the articles;
 - b. The date to which the period of duration is extended; and
 - c. A statement that the limited liability company has been in continuous operation since before the date of expiration of its original period of duration.

SECTION 87. AMENDMENT. Subsection 3 of section 10-32-132 of the North Dakota Century Code is amended and reenacted as follows:

3. If neither the limited liability company's registered agent nor an officer of the limited liability company can be found at the registered office, or if a limited liability company fails to maintain a registered agent in this state and a manager of the limited liability company cannot be found at the registered office, then the secretary of state is the agent of the limited liability company upon whom the process, notice, or demand may be served. The 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 a person not a party, verifying that ~~neither the registered agent or nor a~~ manager 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;~~ and
 - c. Is deemed personal service upon the limited liability company and is made by filing with the secretary of state ~~an original and two;~~
 - (1) Three copies of the process, notice, or demand, ~~along with the;~~ and
 - (2) The fees provided for in section 10-32-150.

The secretary of state shall immediately forward, by registered mail, addressed to the limited liability company 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.

SECTION 88. AMENDMENT. Subsection 2 of section 10-32-149 of the North Dakota Century Code is amended and reenacted as follows:

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 prescribed in ~~subsection 43~~ 53 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.

SECTION 89. Section 10-32-153.1 of the North Dakota Century Code is created and enacted as follows:

10-32-153.1. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is confidential. The secretary of

state shall delete or obscure any social security number or federal tax identification number before a copy of any document is released to the public.

SECTION 90. 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. "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.
2. "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 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 documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.
3. "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.
4. "Board" means the board of directors of a corporation.
- 4- ~~5~~. "Board member" means an individual serving on the board.
- 5- ~~6~~. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.
- 6- ~~7~~. "Corporation" means a corporation, other than a foreign corporation, that is incorporated under or governed by this chapter.

- ~~7-~~ 8. "Director" means a member of the board.
- ~~8-~~ 9. "Domestic organization" means an organization created under the laws of this state.
10. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
11. "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.
12. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
13. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
14. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
- ~~a. The following have been~~ That a document 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 have been was determined by the secretary of state to conform to law:
 - ~~(1) A signed original or a legible facsimile telecommunication of a signed original, of a request for reserved name; or a signed original of all other documents, meeting the applicable requirements of this chapter; and~~
 - ~~(2) The fees provided for in section 10-33-140; and~~
 - ~~b. The~~ That the secretary of state has shall then:
 - ~~(1) Endorsed on the original the word "filed", and the month, day, and year~~ Record the actual date on which the document is filed, and if different, the effective date of filing; and
 - ~~(2) Recorded~~ Record the document in the office of the secretary of state.
- ~~9-~~ 15. "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.

- 40- 16. "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.
17. "Good faith" means honesty in fact in the conduct of an act or transaction.
- 44- 18. "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.
- 42- 19. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and successive federal revenue acts.
- 43- 20. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
- 44- 21. "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.
- 45- 22. "Member" means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.
- 46- 23. "Members with voting rights" means members or a class of members that has voting rights with respect to the purpose or matter involved.
- 47- 24. "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.
- 48- 25. "Notice":
- a. Is given by a member of a corporation to the corporation or an officer of the corporation ~~when~~:
 - (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; ~~and~~ or
 - (2) When given by a form of electronic communication consented to by the corporation to which the notice is given:

- (a) If by facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.
 - (b) If by electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.
 - (c) If by 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) If by any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
- b. ~~It~~ Is given, in all other cases, is given to a person:
- (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; ~~or~~
 - (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 ~~therein~~ 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.
- c. Is given by mail when deposited in the United States mail with sufficient postage affixed.
- d. Is deemed received when it is given.
- ~~19.~~ 26. "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.
- ~~20.~~ 27. "Organization" means a corporation, whether domestic or foreign, incorporated in or authorized to do business in this state under another chapter of this code; limited liability company; partnership; limited partnership; limited liability partnership; limited liability limited partnership, joint venture; association; business trust; estate; trust; enterprise; or any other legal or commercial entity.
- ~~24.~~ 28. "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.
- ~~22.~~ 29. "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.
30. "Registered office" means the place in this state designated in the articles of a corporation as the registered office of the corporation.
- ~~23.~~ 31. "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.

- ~~24.~~ 32. "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.
33. "Signed" means ~~the~~:
- 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 document, is placed on a document, as provided in ~~subsection 39 of~~ under section ~~41-04-11, 41-01-09;~~ and:
 - a. b. With respect to a document required by this chapter to be filed with the secretary of state, ~~means the~~ that:
 - (1) The document ~~has been~~ is signed by a person authorized to ~~sign do so~~ by this chapter, the articles, ~~the~~ 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
 - b. ~~With respect to a document not required by this chapter to be filed with the secretary of state, the signature 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 document.~~
 - (2) The signature and the document are communicated by a method or medium of communication acceptable by the secretary of state.
- ~~25.~~ 34. "Subsidiary" of a specified corporation means:
- a. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly through related ~~corporations or limited liability companies~~ organizations, by the specified corporation; or
 - b. A 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~~ organizations, by the specified limited liability company.
- ~~26.~~ 35. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.
- ~~27.~~ 36. "Vote" includes authorization by written action.
- ~~28.~~ 37. "Written action" means:
- a. A written document signed by all of the persons required to take the action; or

- b. The counterparts of a written document signed by any of the persons taking the action.
 - (1) Each counterpart constitutes the action of the persons signing it; and all
 - (2) All the counterparts are one written action by all of the persons signing them.

SECTION 91. Section 10-33-01.1 of the North Dakota Century Code is created and enacted as follows:

10-33-01.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 92. 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 a word or phrase that indicates or implies that it may not be incorporated under this chapter.
 - d. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
 - e. May not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal nonprofit purpose for which a corporation may be incorporated under this chapter.
 - f. Unless a document in compliance with subsection 2 ~~of this section~~ is filed with the articles, may not be the same as or deceptively similar to:

- (1) The name, whether foreign and authorized to ~~do business~~ conduct activities in this state or domestic, 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, 45-10.1-03, 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. 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.
- This subsection does not affect the right of a domestic 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.
3. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
4. 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.
5. A corporation that is ~~merged~~ the surviving organization in a merger with another domestic one or foreign corporation, or that is incorporated by the reorganization of one or more domestic or foreign corporations other organizations, or that acquires by sale, lease, or other disposition to or exchange with a ~~domestic corporation~~ an organization all or substantially all of the assets of another ~~domestic or foreign corporation~~ 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 corporations/organizations, if the other ~~corporation~~ was organization whose name is sought to be used:
- a. Was incorporated, organized, formed, or registered under the laws of; or is authorized to conduct activities in, 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, 45-10.1-03, 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 corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from ~~doing business~~ 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.
7. If a corporation's period of existence has expired or is involuntarily dissolved by the secretary of state pursuant to section 10-33-139, the corporation may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-33-08; amending pursuant to section 10-33-118; or reinstating pursuant to section 10-33-139. If the name has been adopted for use or reserved by another person, 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.

SECTION 93. AMENDMENT. Section 10-33-11 of the North Dakota Century Code is amended and reenacted as follows:

10-33-11. Reserved name.

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-33-10 may be reserved by any person.

2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in section 10-33-140:
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in section 10-33-140.
4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, together with the fees provided in section 10-33-140.
5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for reserved name.~~
6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 94. AMENDMENT. Section 10-33-21 of the North Dakota Century Code is amended and reenacted as follows:

10-33-21. General powers.

1. A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.
2. A corporation has perpetual duration.
3. A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.
4. A corporation may purchase, lease, or otherwise acquire, own, hold, improve, and use and otherwise deal in and with real or personal property, or any interest in property, wherever situated.
5. A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in property, wherever situated.
6. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of, use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality.

7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income.
8. A corporation may invest and reinvest its funds.
9. A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.
10. A corporation may conduct its ~~business~~ activities, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.
11. Except as otherwise prohibited by law, a corporation may make donations, irrespective of corporate benefit, for:
 - a. The public welfare;
 - b. Social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes, and for similar or related purposes;
 - c. The purpose of fostering national or international amateur sports competition; and
 - d. The prevention of cruelty to children and animals, and for similar or related purposes.
12. A corporation may pay pensions, retirement allowances, and compensation for past services and establish employee or incentive benefit plans, trusts, and provisions for the benefit of the corporation and the corporation's related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.
13. A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control.
14. A corporation may provide for its benefit life insurance and other insurance with respect to the services of its officers, directors, employees, and agents, or on the life of a member for the purpose of acquiring, at the death of the member, any membership interests in the corporation owned by the member.
15. A corporation may have, alter at pleasure, and use a corporate seal as provided in section 10-33-22.

16. A corporation may adopt, amend, and repeal bylaws relating to the management of the ~~business activities~~ or the regulation of the affairs of the corporation as provided in section 10-33-26.
17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in section 10-33-44 and fix their compensation.
18. A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties and fix their compensation.
19. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-33-82.
20. A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 10-33-83.
21. A corporation shall indemnify those persons identified in section 10-33-84 against certain expenses and liabilities only as provided in section 10-33-84 and may indemnify other persons.
22. A corporation may conduct all or part of its ~~business activities~~ under one or more trade names as provided in chapter 47-25.
23. A corporation may take, receive, and hold real and personal property, including the principal and interest of money or other fund, that is given, conveyed, bequeathed, devised to, or vested in the corporation in trust when the corporation or a related organization has a vested or contingent interest in the trust.
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 59-02-08.11.
25. A corporation may be a member of or the owner of the ownership interest in another domestic or foreign organization.
26. A corporation may dissolve and wind up.
27. A corporation may merge and consolidate with other domestic or foreign nonprofit corporations organized for related purposes.
28. A corporation ~~doing business~~ conducting activities as a hospital may merge with a corporation incorporated for profit and form a corporation under this chapter.
29. A corporation may acquire an owner's interest in another organization.
30. A corporation may have and exercise all other powers necessary or convenient to effect any or all of the purposes for which the corporation is incorporated.

SECTION 95. AMENDMENT. Subsection 3 of section 10-33-23 of the North Dakota Century Code is amended and reenacted as follows:

3. In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation or to enjoin the corporation from the transaction of unauthorized ~~business~~ business activities.

SECTION 96. AMENDMENT. Subsection 2 of section 10-33-25 of the North Dakota Century Code is amended and reenacted as follows:

2. After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall, within a reasonable time, either hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of ~~transacting business~~ conducting activities and taking actions necessary or appropriate to complete the organization of the corporation. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting. Incorporators and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board pursuant to subsection 5 of section 10-33-39.

SECTION 97. AMENDMENT. Subsection 1 of section 10-33-27 of the North Dakota Century Code is amended and reenacted as follows:

1. The ~~business~~ business activities and affairs of a corporation must be managed by or under the direction of a board.
 - a. All directors are entitled to vote and have equal rights and preferences except as otherwise provided in the articles or bylaws.
 - b. The members of the first board may be named in the articles, designated or appointed pursuant to the articles, or elected by the incorporators under section 10-33-25.

SECTION 98. AMENDMENT. Subsections 1 and 2 of section 10-33-39 of the North Dakota Century Code are amended and reenacted as follows:

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2.
 - a. Unless the articles or bylaws provide otherwise, a meeting of the board must be held at least once per year.
 - b. If the articles, bylaws, or board fails to select a place for a meeting, the meeting must be held at the principal executive office; ~~unless the articles or bylaws provide otherwise.~~
 - c. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.
 - d. Participation in a meeting by either of the means set forth in subsection 2 constitutes presence at the meeting.
2. ~~A board meeting may be conducted by:~~

- a. ~~A conference among directors using any~~ Any meeting among directors may be conducted:
- a. Solely by one or more means of remote communication through which all of the directors may simultaneously hear each other during the conference constitutes a board participate in the meeting; if:
- (1) If the same notice is given of the conference as would be required by subsection 3 is given for a the meeting; and if
- (2) If the number of directors participating in the conference meeting is sufficient to constitute a quorum at a meeting. Participation in a meeting by this means is personal presence at the meeting; or
- b. ~~Any means of communication through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by this means is personal presence at the meeting. By means of conference telephone or, if authorized by the board, by such other means of remote communication, in each case through which that director, other directors so participating, and all directors physically present at the meeting participate with each other during the meeting.~~

SECTION 99. AMENDMENT. Subsections 1 and 2 of section 10-33-43 of the North Dakota Century Code are amended and reenacted as follows:

1. An action required or permitted to be taken at a board meeting may be taken by written action signed, or consented to by authenticated electronic communication, by all of the directors. If the articles so provide, any action, other than an action requiring member approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.
2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required number of directors, unless a different effective time is provided in the written action.

SECTION 100. AMENDMENT. Subsection 1 of section 10-33-44 of the North Dakota Century Code is amended and reenacted as follows:

1. A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the ~~business activities~~ of the corporation to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights or remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

SECTION 101. AMENDMENT. Subsection 1 of section 10-33-50 of the North Dakota Century Code is amended and reenacted as follows:

1. The president shall:
 - a. Have general active management for the ~~business~~ activities of the corporation;
 - b. When present, preside at all meetings of the board and of members;
 - c. See that all orders and resolutions of the board are carried into effect;
 - d. Sign and deliver in the name of the corporation, any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the board to some officer or agent of the corporation;
 - e. Maintain records of and, whenever necessary, certify all proceedings of the board and the members; and
 - f. Perform other duties prescribed by the board.

SECTION 102. AMENDMENT. Subsection 3 of section 10-33-65 of the North Dakota Century Code is amended and reenacted as follows:

3. An annual meeting of members must be held at the time and place stated in or fixed in accordance with the articles or bylaws. If a place is not stated or if a demand for a meeting is made under subsection 2, the meeting must be held in the county where the principal executive office of the corporation is located. To the extent authorized in the articles or bylaws, the board may determine that an annual meeting of the members shall be held solely by means of remote communication in accordance with subsection 2 of section 10-33-75.

SECTION 103. AMENDMENT. Subsection 3 of section 10-33-66 of the North Dakota Century Code is amended and reenacted as follows:

3. Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the articles, bylaws, or by the president or the board. If a special meeting is demanded by the members, the meeting must be held in the county where the principal executive office of the corporation is located. To the extent authorized in the articles or bylaws, the board may determine that a special meeting of the members shall be held solely by means of remote communication in accordance with subsection 2 of section 10-33-75.

SECTION 104. AMENDMENT. Section 10-33-73 of the North Dakota Century Code is amended and reenacted as follows:

10-33-73. Action without a meeting. 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.
 - 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.
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 written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. 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.~~
4. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the certificate must indicate ~~that~~ if the action was taken under this section.

SECTION 105. AMENDMENT. Section 10-33-75 of the North Dakota Century Code is amended and reenacted as follows:

10-33-75. Electronic Remote communications for member meetings.

1. ~~A conference among~~ This section shall be construed and applied to:
 - a. Facilitate remote communication consistent with the applicable law; and
 - b. Be consistent with reasonable practices concerning remote communication and with continued expansion of these practices.
2. To the extent authorized by the articles or bylaws and determined by the board:
 - a. A meeting of the members may be held solely by any one or more means of remote communication through which the participants may simultaneously hear each other during the conference constitutes a regular or special meeting of the members:
 - a. (1) If the same notice of the meeting is given of the conference as would be required for a meeting to every member entitled to vote; and

- b. (2) ~~If the number of voting members participating in the conference would be~~ meeting is sufficient to constitute a quorum at a meeting.

~~Participation in a conference by this means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-33-77 are met.~~

2. b. ~~A member may participate in~~ not physically present at a regular or special meeting of members not described in subsection 4 by any ~~may by~~ means of remote communication through which the member, other participants, and all persons physically present at the participate in a meeting may simultaneously hear each other during the meeting. ~~Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-33-77 are met~~ of members held at a designated place.
3. In any meeting of members held solely by means of remote communication under subdivision a of subsection 2 or in any meeting of members held at a designated place in which one or more members participate by means of remote communication under subdivision b of subsection 2:
- a. The corporation shall implement reasonable measures:
- (1) To verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a member; and
- (2) To provide each member participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:
- (a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;
- (b) If allowed by the procedures governing the meeting, have the member's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and
- (c) If otherwise entitled, vote on matters submitted to the members.
- b. Participating in a meeting by this means constitutes presence at the meeting in person or by proxy if all of the other requirements of section 10-33-77 are met.
4. With respect to notice to members:
- a. Any notice to members given by the corporation under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the member to whom the notice is given is effective when given. The notice is deemed given:

- (1) If by facsimile communication, when directed to a telephone number at which the member has consented to receive notice;
 - (2) If by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice;
 - (3) If by a posting on an electronic network on which the member has consented to receive notice, together with separate notice to the member of the specific posting, upon the later of:
 - (a) The posting; or
 - (b) The giving of the separate notice; and
 - (4) If by any other form of electronic communication by which the member has consented to receive notice, when directed to the member.
- b. An affidavit of the secretary, other authorized officer, or 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.
- c. Consent by a member 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 member, provided that no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.
5. Any ballot, vote, authorization, or consent submitted by electronic communication under this chapter may be revoked by the member submitting the ballot, vote authorization, or consent so long as the revocation is received by an officer of the corporation at or before the meeting or before an action without a meeting is effective according to section 10-33-73.
6. Waiver of notice by a member of a meeting by means of authenticated electronic communication ~~described in subsections 4 and 2~~ may be given in the manner provided in subsection 5 of section 10-33-68. Participation in a meeting by means of ~~communications~~ remote communication described in ~~subsections 4 and subdivisions a and b of subsection 2~~ is a waiver of notice of that meeting, except when the member objects:
 - a. ~~Objects at~~ At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened;
or
 - b. ~~Objects before~~ Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 106. AMENDMENT. Subsection 1 of section 10-33-77 of the North Dakota Century Code is amended and reenacted as follows:

1. If the articles or bylaws permit proxy voting, a member may ~~appoint a proxy to cast or authorize the casting of a vote or otherwise act for the member by signing an:~~
 - a. Filing a nonelectronic written appointment form either personally or of a proxy signed by the member, with an ~~attorney-in-fact~~ officer of a corporation at or before the meeting at which the appointment is to be effective; or
 - b. Telephonic transmission or authenticated electronic communication whether or not accompanied by written instructions of the member, of an appointment of a proxy with the corporation or the corporation's duly authorized agent at or before the meeting at which the appointment is to be effective.

SECTION 107. AMENDMENT. Section 10-33-81 of the North Dakota Century Code is amended and reenacted as follows:

10-33-81. Equitable remedies. If a corporation or an officer or director of the corporation violates this chapter, a court in this state, in an action brought by at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, or by the attorney general, may grant equitable relief it considers just and reasonable in the circumstances and award expenses, including reasonable attorney's fees and disbursements, to the members. The court may award the attorney general reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action brought by the attorney general under this chapter.

SECTION 108. AMENDMENT. Section 10-33-93 of the North Dakota Century Code is amended and reenacted as follows:

10-33-93. Merger of corporation ~~doing business~~ conducting activities as a hospital with a corporation organized for profit - Retention of property tax status. Notwithstanding any provision of chapter 10-19.1 and this chapter, a corporation ~~doing business~~ conducting activities as a hospital may merge with a corporation incorporated for profit and form a corporation incorporated under this chapter.

1. Notwithstanding chapter 57-02 or any other provision of law, any interest in property of corporations merging under this section retains the same property tax status after the merger as it had in the taxable year before the merger.
2. Notwithstanding chapter 57-39.2 or 57-40.2 or any other provision of law, the sale, purchase, or use of any property by a corporation merging under this section retains the same status under the sales and use tax laws after the merger as it would have had before the merger.

SECTION 109. AMENDMENT. Subsection 1 of section 10-33-101 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:

- a. By publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located; and
- b. By giving written notice to known creditors and claimants pursuant to subsection ~~48~~ 25 of section 10-33-01.

SECTION 110. AMENDMENT. Subsections 2 and 3 of section 10-33-103 of the North Dakota Century Code are amended and reenacted as follows:

2. When the certificate of dissolution has been issued by the secretary of state, or on a later date within thirty days after filing if the articles of dissolution so provide, the corporation is dissolved.
3. The secretary of state shall issue to the dissolved corporation, or its legal representative, a certificate of dissolution that contains:
 - a. The name of the corporation;
 - b. The date the articles of dissolution ~~were filed with the secretary of state~~ is effective; and
 - c. A statement that the corporation was dissolved as of the effective date of dissolution.

SECTION 111. AMENDMENT. Subsection 4 of section 10-33-104 of the North Dakota Century Code is amended and reenacted as follows:

4. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state.
 - a. After the notice is filed, the corporation may resume ~~business~~ its activities.
 - b. If notice to the attorney general has been given under section 10-33-122, the notice of revocation also must be given to the attorney general on or before the time that it is filed with the secretary of state.

SECTION 112. 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 ~~business~~ 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; or
 - (b) After changing its registered office, to file with the secretary of state a statement of the change;
 - (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 113. AMENDMENT. Subsections 1, 2, and 3 of section 10-33-108 of the North Dakota Century Code are amended and reenacted as follows:

1. In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the ~~business~~ activities of the corporation until a full hearing can be held.
2. When a proceeding involving a corporation described in subsection 1 of section 10-33-122 is begun, the court shall order that a copy of the petition be served on the attorney general. In all proceedings under this section, the attorney general has a right to participate as a party.
3. After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets. A receiver has authority, subject to the order of the court, to continue the ~~business~~ activities of the corporation and to sell, lease, transfer, or otherwise dispose of all or any

of the property and assets of the corporation either at public or private sale.

SECTION 114. AMENDMENT. Subsection 3 of section 10-33-120 of the North Dakota Century Code is amended and reenacted as follows:

3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The 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 a person who is not a party, verifying that ~~neither the registered agent or nor an officer~~ can be found at the registered office ~~must be provided to the secretary of state.~~ Service on the secretary of state of any process, notice, or demand is; and
 - c. Is deemed personal service upon the corporation and must be made by filing with the secretary of state ~~an original and two;~~
 - (1) Three copies of the process, notice, or demand, ~~along with the;~~ and
 - (2) The fees provided in section 10-33-140.

The secretary of state shall immediately forward, by registered mail, addressed to the corporation at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

SECTION 115. AMENDMENT. Subsection 1 of section 10-33-128 of the North Dakota Century Code is amended and reenacted as follows:

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 of the proposed registered office of the foreign corporation in this state;
- f. The name of the proposed 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 business 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. The purpose or purposes of the foreign corporation which it proposes to pursue in conducting its activities in this state;
- h. The names and addresses of the directors and officers of the foreign corporation; and
- i. 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.

SECTION 116. AMENDMENT. Subsection 2 of section 10-33-139 of the North Dakota Century Code is amended and reenacted as follows:

- 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 prescribed in subsection 24 33 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.

SECTION 117. Section 10-33-142.1 of the North Dakota Century Code is created and enacted as follows:

10-33-142.1. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any document is released to the public.

⁴² **SECTION 118. AMENDMENT.** Section 45-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-01. (101) Definitions. As used in this chapter, unless the context otherwise requires:

1. "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 all other cases, the mailing address, including a zip code.
2. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:
 - (1) To the principal place of business of the limited partnership;
or
 - (2) To a general partner or agent of the limited partnership authorized by the limited partnership to receive the electronic communication; and
 - b. That the electronic communication sets forth information from which the limited partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. "Business" includes every trade, occupation, and profession.
- ~~3.~~ 4. "Certificate of limited partnership" means the certificate referred to in section 45-10.1-08, and the certificate as amended or restated.
4. ~~5.~~ "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in that partner's capacity as a partner.
- ~~5.~~ 6. "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to the partner's transferee.
- ~~6.~~ 7. "Domestic organization" means an organization created under the laws of this state.
8. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

⁴² Section 45-10.1-01 was also amended by section 1 of Senate Bill No. 2073, chapter 389.

9. "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.
10. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
11. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
12. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section 45-10.1-26.
7. 13. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
- a. ~~That a signed original or a legible facsimile telecommunication of a signed original of a request for reserved name or a signed original of all other documents~~ document meeting the applicable requirements of this chapter together with the fees provided in section 45-10.1-15 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 shall then:
 - (1) ~~Endorse on the original the word "filed" and the month, day, and year~~ Record the actual date on which the document is filed, and if different, the effective date of filing; and
 - (2) Record the document in the office of the secretary of state.
8. 14. "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.
9. 15. "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.
16. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.
10. 17. "Jurisdiction of origin" means the jurisdiction in which the limited partnership status of the foreign limited partnership is created.

- 41- 18. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
19. "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.
20. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.
- 42- 21. "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.
- 43- 22. "Notice":
- a. Is given to a limited partnership or to a partner of the limited partnership ~~when~~:
 - (1) When in writing and mailed or delivered to the limited partnership or the partner at the registered office or principal executive office of the limited partnership; or
 - (2) When given by a form of electronic communication consented to by the limited partnership or the partner to which the notice is given:
 - (a) If by facsimile communication, when directed to a telephone number at which the limited partnership or the partner has consented to receive notice;
 - (b) If by electronic mail, when directed to an electronic mail address at which the limited partnership or partner has consented to receive notice;
 - (c) If by posting on an electronic network on which the limited partnership or partner has consented to receive notice, together with separate notice to the limited partnership or partner 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 limited partnership or partner has consented to receive notice, when directed to the limited partnership or partner.
 - b. ~~In all other cases, is~~ Is given to a person 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; ~~or~~
 - (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 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.
- c. Is given when deposited in the United States mail with sufficient postage affixed.
- d. Is deemed received when it is given.

14. 23. "Organization" means:

- a. Whether domestic or foreign, a corporation incorporated in or authorized to do business in this state under this or another chapter of this code, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; 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.
24. "Partner" means a general or limited partner.
45. ~~25.~~ "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.
46. ~~26.~~ "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.
47. ~~27.~~ "Principal executive office" means:
- a. An office from which the limited partnership conducts business; or
 - b. If the limited partnership has no office from which it conducts business, then the registered office of the limited partnership.
48. ~~28.~~ "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.
29. "Signed" means ~~that~~:
- 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 document, is placed on a document, as provided in subsection 39 of under section 41-01-11, 41-01-09; and:
 - a. b. With respect to a document required by this chapter to be filed with the secretary of state, ~~means the~~ that:
 - (1) The document is signed by a person authorized to sign the document by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
 - b. ~~With respect to a document not required by this chapter to be filed with the secretary of state, means the signature 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 document.~~
49. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- (2) The signature and the document are communicated by a method or medium of communication acceptable by the secretary of state.

SECTION 119. Section 45-10.1-01.1 of the North Dakota Century Code is created and enacted as follows:

45-10.1-01.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 120. Section 45-10.1-01.2 of the North Dakota Century Code is created and enacted as follows:

45-10.1-01.2. Applicability of chapters 45-12 through 45-21.

1. In any case not provided for in this chapter, chapters 45-12 through 45-21 govern.
2. If applying chapters 45-12 through 45-21 to a limited partnership, all references in chapters 45-12 through 45-21 to a "partnership" refer to a "limited partnership".
3. If any provision of this chapter conflicts with chapters 45-12 through 45-21, the provision of this chapter takes precedence.

SECTION 121. AMENDMENT. Subsection 6 of section 45-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A limited partnership that is ~~merged~~ the surviving organization in a merger with another domestic one or foreign organization, or that is organized by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic an organization all or substantially all of the assets of another domestic or foreign organization including its name, may include in its name, subject to the requirements of subsection 1, the name of 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, 45-10.1-03, 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.

SECTION 122. AMENDMENT. Section 45-10.1-03 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-03. (103) Reserved name.

1. The exclusive right to the use of a limited partnership name otherwise permitted by section 45-10.1-02 may be reserved by any person.
2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in section 45-10.1-15:
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a limited partnership name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing in the office of the secretary of state a notice of the transfer, and specifying the name and address of the transferee, together with fees provided in section 45-10.1-15.
4. The right to the exclusive use of a limited partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation, together with the fees provided in section 45-10.1-15.
5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for reserved name.~~
6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 123. AMENDMENT. Section 45-10.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-07.1. Registration of general partner. A general partner must be registered separately with the secretary of state at the time of filing a certificate of limited partnership or the registration of foreign limited partnership whenever that general partner is either a domestic or foreign:

1. Corporation;
2. Limited liability company;
3. Limited ~~liability~~ partnership;
4. Limited liability partnership;
5. Limited liability limited partnership;

6. General partnership using a fictitious name; or
- 6- 7. Any other organization that has a registration responsibility with the secretary of state.

SECTION 124. AMENDMENT. Subsections 7 and 8 of section 45-10.1-09 of the North Dakota Century Code are amended and reenacted as follows:

7. A limited partnership must notify the secretary of state in writing whenever a general partner changes the address of its principal place of business. A ~~corporate~~ An annual report filed by the secretary of state that reflects a change of address of a general partner may serve as such notice. This notice is not subject to the amendment fee prescribed in section 45-10.1-15.
8. A limited partnership that changes its name and that is the owner of a trademark, or uses a fictitious name registered with the secretary of state, or is a general partner of another limited partnership or limited liability limited partnership on file with the secretary of state, or is a managing partner of a limited liability partnership on file with the secretary of state, must effect a change of name in each of such registrations simultaneously with the filing of the amendments.

SECTION 125. AMENDMENT. Section 45-10.1-13 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-13. (206) Secretary of state - Filing in office of secretary of state.

1. A signed ~~copy~~ document of the certificate of limited partnership and of any certificates of amendment or cancellation, or of any judicial decree of amendment or cancellation, must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall ~~endorse on the copy the word "Filed" and the day, month, and year of the filing and shall file the copy~~ document in the office of the secretary of state.
2. Upon the filing of a certificate of amendment or judicial decree of amendment in the office of the secretary of state, the certificate of limited partnership is amended as set forth therein, and upon the effective date of a certificate of cancellation, or a judicial decree thereof, the certificate of limited partnership is canceled.

SECTION 126. AMENDMENT. Section 45-10.1-55 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-55. (905) Foreign limited partnership - Changes and amendments.

1. If any statement in the application for registration of a foreign limited partnership is false when made or any arrangements or other facts described change, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a ~~certificate~~ an amended registration, signed by a

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 office of the jurisdiction of origin.

2. A foreign limited partnership that changes the foreign limited partnership's name and files ~~a statement~~ an amended registration as provided in subsection 1 and is the owner of a trademark, uses a fictitious name registered with the secretary of state, or is a general partner of another limited partnership or a limited liability limited partnership on file with the secretary of state, or is a managing partner of a limited liability partnership on file with the secretary of state, shall effect a change of name in each of the foregoing registrations which is applicable when the foreign limited partnership files the ~~certificate amending the amended~~ registration of foreign limited partnership.
3. A foreign limited partnership shall file a ~~certificate of amendment~~ an amended registration, signed by a general partner, when a general partner that is a corporation or limited liability company files an amendment changing the general partner's ~~corporate~~ name, or when the general partner files an application for an amended certificate of authority. This ~~certificate of amendment~~ amended registration must be filed simultaneously with the amendment to the articles of incorporation, articles of organization, or application for an amended certificate of authority.
4. A foreign limited partnership shall notify the secretary of state in writing when a general partner changes the address of the general partner's principal place of business. A ~~corporate~~ general partner's annual report filed by the secretary of state that reflects a change of address of a general partner may serve as a notice under this subsection. This notice is not subject to the amendment fee prescribed in section 45-10.1-15.

SECTION 127. AMENDMENT. Section 45-10.1-56 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-56. (906) Foreign limited partnership - Cancellation of registration. A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed ~~and sworn to~~ by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to claims for relief arising out of the transactions of business in this state.

SECTION 128. Section 45-10.1-63 of the North Dakota Century Code is created and enacted as follows:

45-10.1-63. Service of process on a limited partnership.

1. A process, notice, or demand required or permitted by law to be served on a limited partnership may be served on the registered agent or on any responsible person found at the registered office or on the secretary of state as provided in this section.
2. 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 cannot be found at the principal place of business in this

state, the secretary of state is the agent of the limited partnership on whom the process, notice, or demand may be served. 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 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.
 - c. Is deemed personal service on the limited partnership and may 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 45-22-22.
 - d. The secretary of state immediately shall forward, by certified mail addressed to the limited partnership at the limited partnership's registered office or principal place of business in this state, a copy of the process, notice, or demand.
 - e. 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.
3. 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.
 4. 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 in any other manner permitted by law.

SECTION 129. Section 45-10.1-64 of the North Dakota Century Code is created and enacted as follows:

45-10.1-64. 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 prescribed 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 limited partnership's or foreign limited partnership's registered agent in this state at that address.

- c. The address of the limited partnership's or foreign limited partnership's principal executive office.
 - 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 prescribed in subsection 29 of section 45-10.1-01 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 registration was filed by the secretary of state. A limited partnership existing before July 1, 1999, or a foreign limited partnership registered before July 1, 1999, shall file the limited partnership's or foreign limited partnership's first annual report before April first in the year of the expiration of the limited partnership's or foreign limited partnership's registration or renewal registration in effect on December 31, 1999.
 - 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, 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 prescribed 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.
 - 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 limited partnership's or foreign limited partnership's certificate or registration is not in good standing and that the limited partnership's certificate or foreign limited partnership's registration 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 partnership or foreign limited partnership files an annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as prescribed by section 45-10.1-15, the secretary of state will restore the limited partnership's or foreign limited partnership's certificate or registration to good standing.
5. A limited 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, ceases to exist and is considered involuntarily terminated by operation of law.
- a. The secretary of state shall note the termination of the limited partnership's certificate on the records of the secretary of state and shall give notice of the action to the terminated limited partnership.
 - b. Notice by the secretary of state must be mailed to the limited partnership's last registered agent at the last registered office of record.
6. A foreign limited 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 right to transact business in this state.
- a. The secretary of state shall note the revocation of the foreign limited partnership's registration 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 foreign limited partnership's last registered agent at the last registered office of record.
7. A limited partnership that is terminated for failure to file an annual report, or a foreign limited partnership registration 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 prescribed in section 45-10.1-15. The fees must be paid and the report filed within one year following the involuntary termination 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 130. Section 45-10.1-65 of the North Dakota Century Code is created and enacted as follows:

45-10.1-65. Secretary of state - Fees for filing documents. The secretary of state shall charge and collect for:

1. Filing a limited partnership, one hundred dollars.
2. Filing a limited partnership amendment, forty dollars.
3. Filing a limited partnership dissolution, twenty-five dollars.
4. Filing a limited partnership cancellation, twenty-five dollars.
5. Filing a reservation of name, ten dollars.
6. Filing a notice of transfer of a reserved limited partnership name, ten dollars.
7. Filing a cancellation of a reserved limited partnership name, ten dollars.
8. Filing a consent to use a deceptively similar name, ten dollars.
9. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
10. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited partnership affected by the change.
11. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.
12. Filing a resignation as registered agent, ten dollars.
13. Filing a registration of foreign limited partnership, one hundred dollars.
14. Filing a certified statement of amendment of foreign limited partnership, forty dollars.
15. Filing a certified statement of dissolution of foreign limited partnership, twenty-five dollars.
16. Filing a certified statement of cancellation of foreign limited partnership, twenty-five dollars.
17. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.
18. Filing an annual report of a limited partnership or foreign limited partnership, twenty-five dollars. The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:
 - a. After the date prescribed in subsection 3 of section 45-10.1-14, twenty dollars; and
 - b. After the termination of the limited partnership or the revocation of the registration of a foreign limited partnership, the reinstatement fee of one hundred dollars.

19. 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.
20. Filing any process, notice, or demand for service, twenty-five dollars.

SECTION 131. Section 45-10.1-66 of the North Dakota Century Code is created and enacted as follows:

45-10.1-66. Secretary of state - Duties. The secretary of state shall maintain an alphabetical index of all limited partnerships and foreign limited partnerships on file with that office. Except for annual reports, all documents filed with the secretary of state under this chapter must be retained in that office until the documents have been committed to microcopy, at which time the documents may be destroyed.

SECTION 132. Section 45-10.1-67 of the North Dakota Century Code is created and enacted as follows:

45-10.1-67. Secretary of state - Powers - Enforcement - Penalty - Appeal.

1. The secretary of state shall administer this chapter.
2. The secretary of state may propound to any limited partnership subject to this chapter and to any partner any interrogatory reasonably necessary and proper to ascertain whether the partnership has complied with this chapter.
 - a. Any interrogatory must be answered within thirty days after mailing or within any additional time fixed by the secretary of state. Every answer to the interrogatory must be full and complete and be made in writing and under oath.
 - b. If an interrogatory is directed:
 - (1) To an individual, the interrogatory must be answered by that individual;
 - (2) To a domestic limited partnership, the interrogatory must be answered by a general partner; or
 - (3) To a foreign limited partnership, the interrogatory must be answered by a resident partner or, if no partner is a resident partner, a partner designated by the foreign limited partnership.
 - c. The secretary of state need not file any document to which an interrogatory relates until the interrogatory is answered, except if the answers disclose the document is not in conformity with this chapter.
 - d. The secretary of state shall certify to the attorney general, for any action the attorney general determines appropriate, any interrogatory and answers that disclose a violation of this chapter.

- e. Each general partner of a domestic limited partnership or a resident partner or designated partner of a foreign limited partnership who fails or refuses within the time provided by this section to answer truthfully and fully every interrogatory propounded to that person by the secretary of state is guilty of an infraction.
 - f. Any interrogatory propounded by the secretary of state and the answers are not open to public inspection under section 44-04-18. The secretary of state may not disclose any fact or information obtained from an interrogatory except to the extent permitted by law or required for evidence in any criminal proceeding or other action by this state.
3. If the secretary of state rejects any document required by this chapter to be approved by the secretary of state before the document may be filed, the secretary of state shall give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection. That person may appeal to the district court of the county in which the registered office of the domestic limited partnership or foreign limited partnership is, or is proposed to be, situated by filing with the clerk of that court a petition setting forth a copy of the document sought to be filed and a copy of the written rejection of the document by the secretary of state. The 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 any action the court determines proper.
 4. If the secretary of state revokes the registration of any foreign limited partnership, the foreign limited partnership may appeal to district court of the county where the registered office of the foreign limited partnership in this state is situated by filing with the clerk of that court a petition setting forth a copy of the foreign limited partnership's registration and a copy of the notice of revocation given by the secretary of state. The 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 any action the court determines proper.
 5. The attorney general may maintain an action to restrain a foreign limited partnership from transacting business in this state in violation of this chapter.

SECTION 133. Section 45-10.1-68 of the North Dakota Century Code is created and enacted as follows:

45-10.1-68. Secretary of state - Certificates and certified copies to be received in evidence.

1. All copies of documents filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to domestic limited partnerships or foreign limited partnerships which would not appear from a certified copy of any of the foregoing documents or

certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated.

SECTION 134. Section 45-10.1-69 of the North Dakota Century Code is created and enacted as follows:

45-10.1-69. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any document is released to the public.

SECTION 135. Section 45-10.1-70 of the North Dakota Century Code is created and enacted as follows:

45-10.1-70. Secretary of state - Forms to be furnished by the secretary of state. Every annual report must be made on forms prescribed by the secretary of state. Upon request, the secretary of state may furnish forms for all other documents to be filed in the office of the secretary of state. However, the use of these documents, unless otherwise specifically required by law, is not mandatory.

SECTION 136. Section 45-10.1-71 of the North Dakota Century Code is created and enacted as follows:

45-10.1-71. Audit reports and audit of limited partnerships receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any limited partnership that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the limited partnership, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the taxable year of the limited partnership. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any limited partnership required to submit an annual report under this section.

SECTION 137. Section 45-10.1-72 of the North Dakota Century Code is created and enacted as follows:

45-10.1-72. Foreign trade zones.

1. As used in this section, unless the context otherwise requires:
 - a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an act to provide for the establishment, operation, and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934 [48 Stat. 998; 19 U.S.C. 81a et seq.], as amended.
 - b. "Private limited partnership" means a domestic limited partnership or foreign limited partnership, one of the purposes of which is to

establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.

c. "Public corporation" means this state, any political subdivision of this state, any public agency of this state or any political subdivision of this state, or any corporate instrumentality of this state.

2. Any private limited partnership or public corporation may apply to the proper authorities of the United States for a grant of the privilege of establishing, operating, and maintaining foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation, and maintenance of such zones, in accordance with the Act of Congress and other applicable laws and rules.

SECTION 138. AMENDMENT. Section 45-13-01 of the North Dakota Century Code is amended and reenacted as follows:

45-13-01. (101) Definitions. In chapters 45-13 through 45-21 unless the context or subject matter otherwise requires:

1. "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.

2. "Authenticated electronic communication" means:

a. That the electronic communication is delivered:

(1) To the principal place of business of the partnership; or

(2) To a partner or agent of the partnership authorized by the partnership to receive the electronic communication; and

b. That the electronic communication sets forth information from which the partnership can reasonably conclude that the electronic communication was sent by the purported sender.

3. "Business" includes every trade, occupation, and profession.

~~2. "Chief executive office" means an office from which the partnership conducts business.~~

~~3.~~ 4. "Debtor in bankruptcy" means a person who is the subject of:

a. An order for relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or

b. A comparable order under federal, state, or foreign law governing insolvency.

4. 5. "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.
5. 6. "Domestic organization" means an organization created under the laws of this state.
7. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
8. "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.
9. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
10. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
11. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
- a. ~~A signed original or a legible facsimile telecommunication of a signed original of a request for reserved name or the signed original of all other documents~~ That a document meeting the applicable requirements of this chapter together with the fees provided in section 45-13-05 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. ~~The~~ That the secretary of state shall then endorse on the original the word "filed" and the month, day, and year, and record the document in the office of the secretary of state:
 - (1) Record the actual date on which the documents are filed, and if different, the effective date of filing; and
 - (2) Record the document in the office of the secretary of state.
6. 12. "Foreign limited liability partnership" means a partnership that is formed under laws other than the laws of this state and has the status of a limited liability partnership under those laws.
7. 13. "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.

14. "Limited liability partnership" means a partnership that filed a registration under chapter 45-22 and does not have a similar statement in effect in any other jurisdiction.
- ~~8.~~ 15. "Managing partner" means one of the partners charged with the management of the partnership in this state and if no partners are specifically so designated, then all partners.
16. "Notice":
- a. Is given to a partnership or to a partner of a partnership ~~when:~~
- (1) When in writing and mailed or delivered to the partnership or to the partner at the ~~chief~~ principal executive office of the partnership; or
 - (2) When given by a form of electronic communication consented to by the partnership or a partner to which the notice is given:
 - (a) If by facsimile communication, when directed to a telephone number at which the partnership or a partner has consented to receive notice.
 - (b) If by electronic mail, when directed to an electronic mail address at which the partnership or a partner has consented to receive notice.
 - (c) If by posting on an electronic network on which the partnership or a partner has consented to receive notice, together with separate notice to the partnership or a partner if 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 partnership or a partner has consented to receive notice, when directed to the partnership.
- b. ~~Is given, in all other cases is given to a person:~~
- (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; ~~or~~
 - (3) When left at the office of the person with a clerk or other person in charge of the office or; ~~if~~:
 - (a) If there is no one in charge, when left in a conspicuous place in the office; or; ~~if~~
 - (b) If the office is closed or the person to be notified has no office, when left at the dwelling, house, or other

usual place of abode of the person with some person of suitable age and discretion 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.

c. Is given when deposited in the United States mail with sufficient postage affixed.

d. Is deemed received when it is given.

~~9.~~ 17. "Organization" means:

a. Whether domestic or foreign, a corporation incorporated in or authorized to do business in this state under this or another chapter of this code, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; 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.

~~40.~~ 18. "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under section 45-14-02, predecessor law, or comparable law of another jurisdiction.

19. "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

~~44.~~ 20. "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

42. 21. "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.
43. 22. "Principal executive office" means an office from which the partnership conducts business.
23. "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.
44. 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. "Signed" means ~~the~~:
- 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 document, is placed on a document, as provided in ~~subsection 39 of~~ under section 41-01-11, 41-01-09; and:
 - a. b. With respect to a document required by this chapter to be filed with the secretary of state, ~~means the~~ that:
 - (1) The document 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
 - b. ~~With respect to a document not required by this chapter to be filed with the secretary of state, means the signature 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 document.~~
 - (2) The signature and the document are communicated by a method or medium of communication acceptable by the secretary of state.
45. 26. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
46. 27. "Statement" means a:
- a. A statement of partnership authority under section 45-15-03; a;
 - b. A statement of denial under section 45-15-04; a;
 - c. A statement of dissociation under section 45-19-04; a;
 - d. A statement of dissolution under section 45-20-05; a;
 - e. A statement of merger under section 45-21-07; or an

f. An amendment or cancellation of any of the foregoing.

47. 28. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

SECTION 139. Section 45-13-01.1 of the North Dakota Century Code is created and enacted as follows:

45-13-01.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 140. AMENDMENT. Subsections 5 and 6 of section 45-13-04.1 of the North Dakota Century Code are amended and reenacted as follows:

5. A partnership that is ~~merged~~ the surviving organization in a merger with another partnership ~~one or domestic or foreign limited partnership, or that is formed by the reorganization of one or more partnerships or domestic or foreign limited partnerships~~ other organizations, or that acquires by sale, lease, or other disposition to or exchange with a ~~partnership~~ an organization all or substantially all of the assets of another ~~partnership or domestic or foreign limited partnership~~ organization including ~~the partnership's or limited partnership's~~ 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 partnership or domestic or foreign limited partnership~~ organizations if the other ~~partnership or domestic or foreign limited partnership~~ organization whose name is sought to be used:
 - a. Is formed 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 45-10.1-03;
 - 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 partnership in violation of this section does not affect or vitiate the ~~partnership's~~ partnership existence of the partnership. However, a court in this state may, upon application of the

state or of an interested or affected person, enjoin the partnership from doing business under a name assumed in violation of this section, although a statement may have been filed with the secretary of state.

SECTION 141. AMENDMENT. Section 45-13-04.2 of the North Dakota Century Code is amended and reenacted as follows:

45-13-04.2. Reserved name.

1. The exclusive right to the use of a partnership name otherwise permitted by section 45-13-04.1 may be reserved by any person.
2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 45-13-05.
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a partnership name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 45-13-05.
4. The right to the exclusive use of a partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation together with the fees provided in section 45-13-05.
5. ~~The secretary of state may accept for filing a legible facsimile telecommunication of the signed original of any request for reserved name.~~
6. The secretary of state may destroy any reserved name request and any index of reserved names one year after expiration.

SECTION 142. AMENDMENT. Subsections 6 and 7 of section 45-13-05 of the North Dakota Century Code are 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 chief principal executive office at least sixty days before the deadline for filing. 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 address of the ~~chief~~principal executive office.

7. A partnership shall notify the secretary of state in writing upon a change in address of the partnership's ~~chief~~ principal executive office. A statement of renewal filed by the secretary of state which reflects a change of address of the ~~chief~~ principal executive office of the partnership may serve as a notice under this subsection.

SECTION 143. AMENDMENT. Subsection 1 of section 45-13-06 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 2, the law of the jurisdiction in which a ~~partnership has the partnership's chief principal~~ executive office of the partnership is located governs relations among the partners and between the partners and the partnership.

SECTION 144. 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 ~~chief~~ 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 of the registered office of the partnership and the name of the registered agent at that address;
 - (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 145. AMENDMENT. Subsection 1 of section 45-15-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A partnership that files and maintains a statement of partnership authority shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business or the ~~chief~~ principal executive office of the partnership.

SECTION 146. AMENDMENT. Subsection 2 of section 45-15-03.2 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~chief~~ 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.

SECTION 147. AMENDMENT. Section 45-15-04 of the North Dakota Century Code is amended and reenacted as follows:

45-15-04. (304) Statement of denial. A partner or other person named as a partner in a filed statement of partnership authority may file with the secretary of state, along with the fees provided in section 45-13-05, a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in subsections 3 and 4 of section 45-15-03.

SECTION 148. Section 45-16-07 of the North Dakota Century Code is created and enacted as follows:

45-16-07. Action without a meeting. An action required or permitted to be taken at a meeting of the partners may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the partners entitled to vote on the action.

1. If the partnership agreement so provides, any action may be taken by written action signed by the partners who own voting power equal to the voting power that would be required to take the same action at a meeting of the partners at which all partners were present.
 - a. When written action is permitted to be taken by less than all partners, all partners must be notified immediately of its text and effective date.
 - b. Failure to provide the notice does not invalidate the written action.
 - c. A partner who does not sign or consent to the written action has no liability for the action or actions taken by the written actions.
2. The written action is effective when it has been signed, or consented to by authenticated electronic communication, by the required partners, 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 partner signing the certificate must so indicate if the action was taken under this section.

SECTION 149. Section 45-16-08 of the North Dakota Century Code is created and enacted as follows:

45-16-08. Remote communications for partner meetings.

1. This section shall be construed and applied to:

- a. Facilitate remote communication consistent with other applicable law; and
 - b. Be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.
2. To the extent authorized in the partnership agreement:
- a. A meeting of the partners may be held solely by any combination of means of remote communication through which the participants may participate in the meeting:
 - (1) If the notice of the meeting is given to every partner entitled to vote; and
 - (2) If the partnership interests held by the partners participating in the meeting would be sufficient to constitute a quorum at a meeting.
 - b. A partner not physically present at a meeting of partners may by means of remote communication participate in a meeting of partners held at a designated place.
3. In any meeting of partners held solely by means of remote communication under subdivision a of subsection 2, or in any meeting partners held at a designated place in which one or more partners participate by means of remote communication under subdivision b of subsection 2:
- a. The partnership shall implement reasonable measures:
 - (1) To verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a partner; and
 - (2) To provide each partner participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:
 - (a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;
 - (b) If allowed by the procedures governing the meeting, have the partner's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and
 - (c) If otherwise entitled, vote on matters submitted to the partners.
 - b. Participation in a meeting by this means constitutes presence at the meeting.
4. With respect to notice to partners:

- a. Any notice to partners given by the partnership under any provision of this chapter or the partnership agreement by a form of electronic communication consented to by the partner to whom the notice is given is effective when given. The notice is deemed given:
- (1) If by facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;
 - (2) If by electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;
 - (3) If by posting on an electronic network, on which the partner has consented to receive notice, together with separate notice to the partner of the specific posting, upon the later of:
 - (a) The posting; or
 - (b) The giving of the separate notice; or
 - (4) If by any other form of electronic communication by which the partners have consented to receive notice, when directed to the partner.
- b. An affidavit of the managing partner, other authorized partner, or authorized agent of the partnership, 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.
- c. Consent by a partner to notice given by electronic communication may be given in writing or by authenticated electronic communication. The partnership is entitled to rely on any consent so given until revoked by the partner. However, no revocation affects the validity of any notice given before receipt by the partnership of revocation of the consent.
5. Any ballot, vote, authorization or consent submitted by electronic communication under this chapter may be revoked by the partner submitting the ballot, vote, authorization, or consent so long as the revocation is received by the other partners of the partnership at or before the meeting or before an action without a meeting is effective according to section 10-16-07.
6. Waiver of notice by a partner at a meeting by means of authenticated electronic communication may be given in the manner provided in the partnership agreement. Participation in a meeting by means of remote communication described in subdivisions a and b of subsection 2 is a waiver of notice of that meeting, except when the partner objects:
- a. At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or conveyed; or
 - b. Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 150. AMENDMENT. Subsection 1 of section 45-19-04 of the North Dakota Century Code is amended and reenacted as follows:

1. A dissociated partner or the partnership may file with the secretary of state, along with the fees provided in section 45-13-05, a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

SECTION 151. AMENDMENT. Subsections 1 and 2 of section 45-21-05 of the North Dakota Century Code are amended and reenacted as follows:

1. Pursuant to a plan of merger approved as provided in subsection 3, a partnership may be merged with one or more ~~partnerships or limited partnerships~~ other organizations.
2. The plan of merger must set forth:
 - a. ~~The name of each;~~
 - (1) The partnership or limited partnership that is a party to the merger;
 - (2) Each other organization proposing to merge; and
 - (3) The surviving organization into which the other organizations will merge.
 - b. ~~The name of the surviving entity into which the other partnerships or limited partnerships will merge;~~
 - e. ~~Whether the surviving entity is a partnership or a limited partnership and the~~ The status of each partner;
 - ~~c.~~ c. The terms and conditions of the merger;
 - e. d. The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving ~~entity~~ organization, or into money or other property in whole or part; and
 - f. e. The street address of the ~~surviving entity's chief~~ principal executive office of the surviving organization.

SECTION 152. 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 or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its ~~chief principal~~ 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 or limited partnership.

SECTION 153. AMENDMENT. Subsections 1 and 2 of section 45-21-07 of the North Dakota Century Code are amended and reenacted as follows:

1. After a merger, the surviving ~~partnership or limited partnership organization~~ may file a statement that one or more partnerships or limited partnerships have merged into the surviving ~~entity~~ organization.
2. A statement of merger must contain:
 - a. The name of ~~each~~:
 - (1) The partnership or limited partnership that is a party to the merger;
 - (2) Each other organization that is a party to the merger; and
 - (3) The surviving organization into which the other organizations were merged.
 - b. ~~The name of the surviving entity into which the other partnerships or limited partnership were merged;~~
 - c. The street address of the ~~surviving entity's chief principal~~ executive office of the surviving organization and of an office in this state, if any; ~~and~~
 - d. ~~Whether the surviving entity is a partnership or a limited partnership.~~

SECTION 154. AMENDMENT. Section 45-22-01 of the North Dakota Century Code is amended and reenacted as follows:

45-22-01. Definitions. In this chapter, unless the context otherwise requires:

1. "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 all other cases, the mailing address, including a zip code.
2. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:
 - (1) To the principal place of business of the limited liability partnership; or
 - (2) To a partner or agent of the limited liability partnership authorized by the limited liability partnership to receive the electronic communication; and
 - b. That the electronic communication sets forth information from which the limited liability partnership can reasonably conclude that the electronic communication was sent by the purported sender.

3. "Domestic limited liability partnership" means a partnership that is organized under the laws of this state with a registration in effect and which is not a foreign limited liability partnership.
- ~~3.~~ 4. "Domestic organization" means an organization created under the laws of this state.
5. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
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. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
8. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
9. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
- a. That a ~~signed original or a legible facsimile telecommunication of a signed original of a request for reserved name; or a signed original of all other documents~~ document meeting the applicable requirements of this chapter, together with the fees provided in section 45-22-23, ~~was~~ has been delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and ~~was~~ has been determined by the secretary of state to conform to law.
 - b. That the secretary of state shall then:
 - (1) ~~Endorse on the original the word "filed" and the month, day, and year~~ Record the actual date on which the document is filed, and if different, the effective date of filing; and
 - (2) Record the document in the office of the secretary of state.
- ~~4.~~ 10. "Foreign limited liability partnership" means a partnership organized as a limited liability partnership under laws other than the laws of this state which is in good standing in the partnership's jurisdiction of origin.
- ~~5.~~ 11. "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.
12. "Jurisdiction of origin" means the jurisdiction in which the limited liability partnership status of the foreign limited liability partnership was created.

- 6- 13. "Limited liability partnership" means a domestic limited liability partnership or a foreign limited liability partnership.
- 7- 14. "Managing partner" means one of the partners charged with the management ~~in this state~~ of the limited liability partnership or foreign limited liability partnership in this state and if no partners are so specifically designated, then all partners.
- 8- 15. "Notice":
- a. Is given to a limited liability partnership or to a partner of the limited liability partnership ~~when~~:
- (1) When in writing and mailed or delivered to the limited liability partnership or the partner at the registered office or principal executive office of the limited liability partnership; or
- (2) When given by a form of electronic communication consented to by the limited liability partnership or the partner to which the notice is given:
- (a) If by facsimile communication, when directed to a telephone number at which the limited liability partnership or the partner has consented to receive notice.
- (b) If by electronic mail, when directed to an electronic mail address at which the limited liability partnership or the partner has consented to receive notice.
- (c) If by posting on an electronic network on which the limited liability partnership or the partner has consented to receive notice, together with separate notice to the limited liability partnership or the partner if 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 limited liability partnership or a partner has consented to receive notice, when directed to the limited liability partnership.
- b. ~~It~~ Is given, in all other cases, is given to a person:
- (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; ~~or~~
- (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 ~~therein~~ 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.
- c. Is given when deposited in the United States mail with sufficient postage affixed.
- d. Is deemed received when given.
- 9- 16. "Organization" means:
- a. Whether domestic or foreign, a corporation incorporated in or authorized to do business in this state under this or another chapter of this code, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; 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.
17. "Originally registered" and "original registration" means the document establishing the limited liability partnership status of the foreign limited liability partnership in the foreign limited liability partnership's jurisdiction of origin.

- 40- 18. "Partnership" means an association of two or more persons to carry on as coowners of a business for profit formed under chapters 45-13 through 45-21, predecessor law, or comparable law of another jurisdiction.
- 44- 19. "Principal executive office" means:
- a. An office from which the limited liability partnership conducts business; or
 - b. If the limited liability partnership has no office from which the limited liability partnership conducts business, the registered office of the limited liability partnership.
- 42- 20. "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.
21. "Register" means the act of filing with the secretary of state which causes:
- a. A domestic limited liability partnership to be created; or
 - b. A foreign limited liability partnership to be authorized to transact business in this state.
- 43- 22. "Registered office" means the place in this state designated as the registered office of the limited liability partnership.
- 44- 23. "Registration" means the document which, when filed with the secretary of state, causes:
- a. A domestic limited liability partnership to be created; or
 - b. A foreign limited liability partnership to be authorized to do business in this state.
- 45- 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 document, is placed on a document, as provided in subsection 39 of under section 41-01-11. 41-01-09; and
 - a. b. With respect to a document required by this chapter to be filed with the secretary of state, ~~the term~~ means ~~the~~ that:
 - (1) The document 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.
 - b. ~~With respect to a document not required by this chapter to be filed with the secretary of state, the signature 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 document.~~

- (2) The signature and the document are communicated by a method or medium of communication acceptable by the secretary of state.

SECTION 155. Section 45-22-01.1 of the North Dakota Century Code is created and enacted as follows:

45-22-01.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record of signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 156. 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) The address of the principal executive office of the domestic limited liability partnership.
 - (4) The address of the registered office of the domestic limited liability partnership and the name of the registered agent at that address.
 - (5) The name and address of each managing partner.
 - (6) A statement that the partnership elects to be a limited liability partnership.
 - (7) 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) The address of the principal executive office of the foreign limited liability partnership.
 - (6) The address of the registered office of the foreign limited liability partnership and the name of the foreign limited liability partnership's registered agent at that address.
 - (7) The name and address of each managing partner.
 - (8) 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 157. AMENDMENT. Subsection 5 of section 45-22-04 of the North Dakota Century Code is amended and reenacted as follows:

5. A limited liability partnership that is ~~merged~~ the surviving organization in a merger with a domestic one or foreign organization, that is registered by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic organization all or substantially all of the assets of another ~~domestic or foreign~~ organization including the ~~organization's~~ 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:
- a. Is 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, 45-10.1-03, 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.

SECTION 158. AMENDMENT. Section 45-22-05 of the North Dakota Century Code is amended and reenacted as follows:

45-22-05. Reserved name.

1. The exclusive right to the use of a limited liability partnership name otherwise permitted by section 45-22-04 may be reserved by any person.
2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 45-22-22.
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a limited liability partnership name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 45-22-22.
4. The right to the exclusive use of a limited liability partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation together with the fees provided in section 45-22-22.
5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for a reserved name.~~
6. The secretary of state may destroy any reserved name request and name request index one year after expiration.

SECTION 159. AMENDMENT. Subsection 2 of section 45-22-17 of the North Dakota Century Code is amended and reenacted as follows:

2. 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 cannot be found at the principal place of business in this state, the secretary of state is the agent of the limited liability partnership on whom the process, notice, or demand may be served. Service on the secretary of state:
 - a. The ~~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 affidavit of a person not a party, verifying that neither a registered agent or nor a responsible person cannot can be found at the registered office or at the principal place of business in this state ~~is conclusive evidence the~~

limited liability partnership has no registered agent or responsible person at the limited liability partnership's registered office or at the limited liability partnership's principal place of business in this state.

- ~~b.~~ c. ~~Service on the secretary of state of any process, notice, or demand is~~ is deemed personal service on the limited liability partnership and may be made by filing with the secretary of state ~~one original and two:~~
- (1) Three copies of the process, notice, or demand ~~together with the;~~ and
 - (2) The fees provided in section 45-22-22.
- ~~e.~~ d. The secretary of state immediately shall forward, by certified mail addressed to the limited liability partnership at the limited liability partnership's registered office or principal place of business in this state, a copy of the process, notice, or demand.
- ~~d.~~ e. 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.

SECTION 160. AMENDMENT. Subsection 2 of section 45-22-21.1 of the North Dakota Century Code is amended and reenacted as follows:

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 prescribed in subsection ~~46~~ 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.

SECTION 161. AMENDMENT. Section 45-23-01 of the North Dakota Century Code is amended and reenacted as follows:

45-23-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Address" means:
 - a. In case of a registered office or principal executive office, the mailing address of the actual office location which may not be only a post-office box; and
 - b. In all other cases, the mailing address.
2. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:

- (1) To the principal place of business of the limited liability limited partnership; or
 - (2) To a partner or agent of the limited liability limited partnership authorized by the limited liability limited partnership to receive the electronic communication; and
- b. That the electronic communication sets forth information from which the limited liability limited partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. "Domestic limited liability limited partnership" means a limited liability limited partnership that is formed under this chapter.
- 3- 4. "Domestic organization" means an organization created under the laws of this state.
5. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
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. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
8. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
9. "Filed with the secretary of state", ~~except as otherwise permitted by law or rule,~~ means, ~~except as otherwise permitted by law or rule:~~
 - a. That a ~~signed original or legible facsimile telecommunication of a signed original of a request for reserved name or a signed original of all of the documents~~ document meeting the applicable requirements of this chapter, together with the fees provided in section 45-23-08, 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 shall then ~~endorse on the original the word "filed" and the month, day, and year:~~
 - (1) Record the actual date on which the document is filed, and if different, the effective date of filing; and ~~record~~
 - (2) Record the document in the office of the secretary of state.

- 4- 10. "Foreign limited liability limited partnership" means a limited liability limited partnership that is:
- a. Organized under the laws other than the laws of this state for a purpose or purposes for which a limited liability limited partnership may be organized under this chapter; and
 - b. In good standing in the jurisdiction of origin.
- 5- 11. "Foreign limited partnership" means a limited partnership that is:
- a. Organized under laws other than the laws of this state for a purpose for which a limited partnership may be organized under chapter 45-10.1; and
 - b. Authorized to transact business in this state as provided in chapter 45-10.1.
- 6- 12. "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.
13. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability limited partnership status of a foreign limited liability limited partnership was created.
- 7- 14. "Limited liability limited partnership" means a domestic limited liability limited partnership.
- 8- 15. "Limited partnership" means a limited partnership formed under chapter 45-10.1.
- 9- 16. "Notice":
- a. Is given to a limited liability limited partnership or to a partner of the limited liability limited partnership ~~when~~:
- (1) When in writing and mailed or delivered to the limited liability limited partnership or to the partner at the registered office or principal executive office of the partnership; or
 - (2) When given by a form of electronic communication consented to by the limited liability limited partnership or a partner to which the notice is given:
 - (a) If by facsimile communication, when directed to a telephone number at which the limited liability limited partnership or a partner has consented to receive notice.
 - (b) If by electronic mail, when directed to an electronic mail address at which the limited liability limited partnership or a partner has consented to receive notice.

- (c) If by posting on an electronic network on which the limited liability limited partnership or a partner has consented to receive notice, together with separate notice to the limited liability limited partnership or a partner if 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 partnership or a partner has consented to receive notice, when directed to the partnership.
- b. ~~In all other cases, is~~ Is given to a person 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; ~~or~~
 - (3) When left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office and 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 residing ~~in that house or abode~~ 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;
- c. Is given when deposited in the United States mail with sufficient postage affixed; and

d. Is deemed received when given.

40- 17. "Organization" means:

a. Whether domestic or foreign, a corporation incorporated in or authorized to do business in this state under this or another chapter of this code, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; 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.

18. "Principal executive office" means:

a. An office from which the limited liability limited partnership conducts business; or

b. If the limited liability limited partnership has no office from which the limited liability limited partnership conducts business, then the registered office of the limited liability limited partnership.

44- 19. "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.

20. "Registered office" means the place in this state designated as the registered office of the limited liability limited partnership.

42- 21. "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.

22. "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 document, is placed on a document, as provided ~~in~~ under section ~~41-01-11, 41-01-09;~~ and

a. b. With respect to a document required by this chapter to be filed with the secretary of state, ~~means the~~ that:

(1) The document 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

b. ~~With respect to a document not required by this chapter to be filed with the secretary of state, the signature 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 document.~~

- (2) The signature and the document are communicated by a method or medium acceptable by the secretary of state.

SECTION 162. Section 45-23-01.1 of the North Dakota Century Code is created and enacted as follows:

45-23-01.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 163. AMENDMENT. Subsection 5 of section 45-23-03 of the North Dakota Century Code is amended and reenacted as follows:

5. A limited liability limited partnership that is ~~merged~~ the surviving organization in a merger with another domestic one or foreign organization, that is organized by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic an organization all or substantially all of the assets of another domestic or foreign organization, including the organization's its name, may include in the limited liability limited partnership's name, subject to the requirements of subsection 1, the name of any of the other organizations, if the other organizationwhose name is sought to be used:
 - a. Is 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, 45-10.1-03, 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.

SECTION 164. Section 45-23-07 of the North Dakota Century Code is created and enacted as follows:

45-23-07. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any document is released to the public.

SECTION 165. REPEAL. Sections 45-10.1-14, 45-10.1-15, and 45-10.1-16 of the North Dakota Century Code are repealed.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 86

SENATE BILL NO. 2348

(Senators J. Lee, Flakoll, Nething)
(Representatives DeKrey, Hawken, Mueller)

HEALTH CARE FACILITY TRANSACTIONS

AN ACT to create and enact sections 10-33-148 and 10-33-149 and a new subsection to section 50-24.4-15 of the North Dakota Century Code, relating to transactions by nonprofit corporations that operate or control hospitals and nursing homes and property-related costs for nursing homes; to amend and reenact sections 10-33-144, 10-33-145, 10-33-146, and 10-33-147 of the North Dakota Century Code, relating to transactions by nonprofit corporations that operate or control hospitals or nursing homes; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-33-144 of the North Dakota Century Code is amended and reenacted as follows:

10-33-144. Transaction by a nonprofit corporation doing business as operating or controlling a hospital or nursing home - Notice to attorney general - Waiting period.

1. A nonprofit corporation doing business as operating or controlling a hospital or nursing home shall notify the attorney general in writing before closing an agreement or a transaction that will:
 - a. Sell, lease, transfer, exchange, option, convey, ~~mortgage, create a security interest in,~~ or otherwise dispose of to a for-profit ~~organization~~ corporation or entity or a nonprofit corporation or entity if fifty percent or more of the assets ~~or operations of the corporation doing business as a hospital~~ or fifty percent or more of the assets or operations of a related organization of the selling corporation are involved in the agreement or transaction;
 - b. Sell, lease, transfer, exchange, option, convey, mortgage, create a security interest in, or otherwise dispose of any of the assets or operations of the corporation doing business as a hospital or any of the assets or operations of a related organization if the transaction or agreement will result in any for-profit organization owning or controlling fifty percent or more of the assets or operations of the corporation doing business as a hospital or fifty percent or more of the assets or operations of a related organization. Transfer control, responsibility, or governance of fifty percent or more of the assets or operations of the nonprofit corporation to a for-profit corporation or entity or another nonprofit corporation or entity; or
 - c. Result in any for-profit ~~organization~~ corporation or entity or another nonprofit corporation or entity having control of, governance of, or the power to direct management and policies of the nonprofit

corporation ~~doing business as~~ operating or controlling a hospital, nursing home, or a related organization.

2. The substitution of a new corporate member that transfers the control of, responsibility for, or governance of the nonprofit corporation, the substitution of a member of the governing body, or any arrangement, written or oral, that would transfer voting control of the entity, is a transfer for purposes of this section.
3. This section applies to a foreign nonprofit corporation that operates or controls a hospital or nursing home within this state.
4. This section does not apply to the following transactions:
 - a. An action involving the enforcement or foreclosure of a security interest, lien, mortgage, judgment, or other creditor rights.
 - b. Agreements or transactions in the usual and regular course of the nonprofit corporation's business and activities.
5. The notice must be provided to the attorney general not less than ninety days before the closing date of the proposed agreement or transaction, and must include:
 - a. The names and addresses of ~~the corporation doing business as a hospital, the for-profit organization,~~ and all other parties to the proposed agreement or transaction;
 - b. The terms of the proposed agreement or transaction, including the proposed sale price;
 - c. A copy of the proposed agreement or transaction; and
 - d. Information regarding whether a Any financial or economic analysis by an expert or independent consultant has been prepared concerning the degree to which the proposed agreement or transaction will serve the public interest, or concerning the fair market value of the corporation doing business as a hospital retained by the nonprofit corporation which addresses the criteria set forth in section 10-33-145.
- 3- 6. A nonprofit corporation doing business as a hospital or nursing home may neither transfer nor convey any assets or control through an agreement or transaction described in this section until ninety days after the corporation gives the attorney general notice required under this section, unless the attorney general waives all or part of the waiting period. ~~Before the end of the waiting period, the attorney general may extend the period up to sixty additional days by providing written notice of the extension to the corporation.~~ The waiting period may be extended for one or more additional sixty-day periods upon agreement between the corporation and the attorney general, or pursuant to a court order.
4. ~~The notice requirements of this section do not apply to a proposed agreement or transaction between related organizations serving the~~

same or similar charitable purposes and are in addition to any notice requirements that may apply under section 10-33-122.

SECTION 2. AMENDMENT. Section 10-33-145 of the North Dakota Century Code is amended and reenacted as follows:

10-33-145. Transaction by a nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home - Attorney general's powers and duties - Experts - Continuing appropriation.

1. Upon receipt of a notice under section 10-33-144, the attorney general may review and investigate the proposed agreement or transaction and may require the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home and the ~~for-profit organization~~ other parties to the agreement or transaction to provide to the attorney general any additional information relevant to the review or investigation of the proposed agreement or transaction.
2. Upon receipt of a notice under section 10-33-144, the attorney general may review the proposed agreement or transaction to determine whether consummation of the proposed agreement or transaction by the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home is consistent with the purposes of the nonprofit corporation or entity operating or controlling a hospital or nursing home and the fiduciary obligations of the ~~corporation doing business as a hospital~~ and the obligations of the officers and directors of the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home and is in accordance with law. The attorney general shall consider the following factors in reviewing and evaluating a proposed agreement or transaction:
 - a. Whether appropriate steps were taken by the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home to safeguard restricted assets transferred to the ~~for-profit organization~~ acquiring entity;
 - b. Whether appropriate steps were taken by the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home to ensure that any proceeds of the proposed agreement or transaction are used for charitable purposes consistent with restrictions placed on assets of and with the charitable purposes of the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home;
 - c. Whether the terms and conditions of the proposed agreement or transaction are fair and reasonable to the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home, including whether the nonprofit corporation doing business as or entity operating or controlling the hospital or nursing home will receive fair market value for ~~the~~ its assets of the corporation and, in a proposed agreement or transaction involving a nursing home, whether the proposed agreement or transaction constitutes a bona fide transaction;
 - d. Whether any conflict of interest or breach of fiduciary duty, ~~as determined by the attorney general~~, exists and or was disclosed,

including any conflict of interest or breach of fiduciary duty related to directors and officers of, executives of, and experts retained by the nonprofit corporation doing business as or entity operating or controlling a hospital, the for-profit organization, or nursing home and any other party to the agreement or transaction; ~~and~~

- e. Whether the agreement or transaction will result in inurement, pecuniary gain, or excess benefit to any person associated with the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home or to any other person;
 - f. Whether the transaction is in the best interests of the nonprofit corporation or entity operating or controlling a hospital or nursing home; and
 - g. Whether the transaction is authorized by the nonprofit corporation's governing documents.
3. For the purpose of reviewing and evaluating the factors identified in subsection 2, the attorney general may retain experts if necessary and reasonable and ~~shall~~ may obtain public comment regarding the proposed agreement or transaction. A contract entered by the attorney general with an expert under this section does not require a bid and is exempt from chapters 44-08 and 54-44.4. If the attorney general intends to seek payment from the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home for the cost of any expert retained under this subsection, at least five days before retaining that expert, the attorney general shall notify the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home of the expert cost projected to be incurred. A nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home which receives notice under this subsection shall pay the reasonable cost of any retained expert. If the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home objects to paying the costs of an expert, the corporation or entity may seek a district court order limiting the corporation's or entity's liability for the costs. In determining whether to issue an order, the court shall consider whether the expert is necessary and reasonable and the cost of the expert relative to the value of the proposed agreement or transaction.
 4. Section 44-04-18.4 applies to any information provided to the attorney general under sections 10-33-144 through 10-33-147.
 5. All costs, fees, and other moneys received under sections 10-33-144 through 10-33-149 must be deposited into the attorney general's operating fund. The moneys in the fund are appropriated to pay the costs incurred in the attorney general's performance of responsibilities pursuant to sections 10-33-144 through 10-33-149.

SECTION 3. AMENDMENT. Section 10-33-146 of the North Dakota Century Code is amended and reenacted as follows:

10-33-146. Transaction by a nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home - Notice of decision - Public meeting - Meeting notice. ~~Before the attorney general approves, denies, or~~

~~takes any other action on a proposed agreement or transaction under section 10-33-144 or 10-33-145~~ Within ninety days of receipt of the written notice required under section 10-33-144, and such other additional extension of time permitted or provided under section 10-33-144, the attorney general shall notify, in writing, the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home of the attorney general's decision to approve, deny, or take any other action on the proposed agreement or transaction. Before issuing a written decision under this section, the attorney general shall may conduct at least one or more public hearing hearings, one of which must be held in the county where the corporation doing business as a hospital or nursing home is located. At a public hearing under this section, the attorney general shall request and receive comments from any interested person regarding the proposed agreement or transaction. At least fourteen days before a public hearing under this section, the attorney general shall provide notice of the meeting by publication in the official newspaper of the city in which the corporation doing business as a hospital or nursing home is located. The attorney general shall also provide notice of the meeting to the governing body of the county in which the corporation doing business as a hospital or nursing home is located, if applicable, and to the governing body of the city in which the corporation doing business as a hospital or nursing home is located, if applicable. Any party to the agreement may institute legal proceedings in the district court of the county in which the hospital or nursing home is located to review the attorney general's decision. In a district court action brought under this section, the attorney general's decision is subject to de novo review by the court. In a proceeding under this section, the attorney general must be served with notice and is entitled to be heard. If the attorney general substantially prevails in a proceeding under this section, the attorney general is entitled to an award of attorney's fees, investigation fees, costs, and expenses of any investigation and proceeding under this section. The court shall award attorney's fees to the attorney general under this section based upon the hourly rates the attorney general charges to state agencies for the attorney general's legal services. A court may not apply the limitation on the rate of the attorney general's attorney's fees under this section as a limitation on an award of attorney's fees to the attorney general under any other section.

SECTION 4. AMENDMENT. Section 10-33-147 of the North Dakota Century Code is amended and reenacted as follows:

10-33-147. Transaction by a nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home - Attorney general decision. The attorney general may bring proceedings to secure compliance with section sections 10-33-144 through 10-33-149 in the district court of the county in which the hospital or nursing home is located. If the attorney general determines consummation of the proposed transaction or agreement is not consistent with the fiduciary obligations of the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home and the corporation's officers and directors, or is not in accordance with law, the attorney general may bring proceedings in the district court of the county in which the hospital or nursing home is located to enjoin the consummation of the proposed transaction or agreement or to secure any other relief available under the law. In a district court action brought under this section, the attorney general's decision is subject to de novo review by the court. If the attorney general substantially prevails in an action brought under this section, the attorney general is entitled to an award of attorney's fees, investigation fees, costs, and expenses of any investigation and action brought under this section. The court shall award attorney's fees to the attorney general under this section based upon the hourly rates the attorney general charges to state agencies for the attorney general's legal services. A court may not apply the limitation on the rate of the attorney general's attorney's fees under this section as a limitation on an award

of attorney's fees to the attorney general under any other section. Failure of the attorney general to take action on a proposed agreement or transaction described in ~~section~~ sections 10-33-144 through 10-33-149 does not constitute approval of the transaction and does not prevent the attorney general from taking other action.

SECTION 5. Section 10-33-148 of the North Dakota Century Code is created and enacted as follows:

10-33-148. Investigation - Subpoena - Hearing - Powers of the attorney general. In discharging the attorney general's responsibilities under sections 10-33-144 through 10-33-149, and in connection with the public hearing provided for in section 10-33-146, the attorney general may conduct investigations, issue subpoenas to any person directly related to the proposed agreement or transaction, and conduct hearings in aid of an investigation or inquiry.

SECTION 6. Section 10-33-149 of the North Dakota Century Code is created and enacted as follows:

10-33-149. Authority of the attorney general or a court is not impaired. Sections 10-33-144 through 10-33-148 are in addition to, and do not supersede, any other authority of the attorney general established by statute, case law, or common law.

⁴³ **SECTION 7.** A new subsection to section 50-24.4-15 of the North Dakota Century Code is created and enacted as follows:

Recognize any mandated costs, fees, or other moneys paid to the attorney general through transactions under sections 10-33-144 through 10-33-149.

Approved April 11, 2003
Filed April 14, 2003

⁴³ Section 50-24.4-15 was also amended by section 1 of House Bill No. 1268, chapter 428.

COUNTIES

CHAPTER 87

HOUSE BILL NO. 1246

(Representatives Wieland, Eckre, Herbel, Maragos, Pollert)
(Senator Lindaas)

HOME RULE COUNTY CRIMINAL ENFORCEMENT

AN ACT to create and enact a new section to chapter 11-09.1 of the North Dakota Century Code, relating to enforcement of criminal violations by a home rule county; and to amend and reenact subsection 5 of section 11-09.1-05 and section 27-05-06 of the North Dakota Century Code, relating to powers of a home rule county and the jurisdiction of the district court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁴ **SECTION 1. AMENDMENT.** Subsection 5 of section 11-09.1-05 of the North Dakota Century Code is amended and reenacted as follows:

5. Provide for the adoption, amendment, repeal, initiative, referral, enforcement, and civil and criminal penalties for violation of ordinances, resolutions, and regulations to carry out its governmental and proprietary powers and to provide for public health, safety, morals, and welfare. However, this subsection does not confer any authority to regulate any industry or activity which is regulated by state law or by rules adopted by a state agency.

SECTION 2. A new section to chapter 11-09.1 of the North Dakota Century Code is created and enacted as follows:

Enforcement of criminal penalties. A county that has adopted a home rule charter may impose a penalty for a violation of an ordinance through a citation, a criminal complaint, or an information through the district court in the county where the offense occurred. The penalty for a violation of an ordinance may be an infraction or a class B misdemeanor.

SECTION 3. AMENDMENT. Section 27-05-06 of the North Dakota Century Code is amended and reenacted as follows:

27-05-06. Jurisdiction of district courts. The district courts of this state have the general jurisdiction conferred upon ~~them~~ the courts by the constitution, and in the exercise of ~~such that~~ that jurisdiction ~~they~~ the courts have power to issue all writs, process, and commissions provided therein or by law or which may be necessary for

⁴⁴ Section 11-09.1-05 was also amended by section 1 of Senate Bill No. 2096, chapter 539.

the due execution of the powers with which ~~they~~ the courts are vested. ~~Such~~ The courts have:

1. Common-law jurisdiction and authority within their respective judicial districts for the redress of all wrongs committed against the laws of this state affecting persons or property.
2. Power to hear and determine all civil actions and proceedings.
3. All the powers, according to the usages of courts of law and equity, necessary to the full and complete jurisdiction of the causes and parties and the full and complete administration of justice, and to carrying into effect ~~their~~ the courts' judgments, orders, and other determinations, subject to a reexamination by the supreme court as provided by law.
4. Jurisdiction of appeals from all final judgments of municipal judges and from the determinations of inferior officers, boards, or tribunals, in ~~such~~ the cases and pursuant to ~~such~~ the regulations as may be prescribed by law.
5. Disputed property line proceedings pursuant to section 11-20-14.1.
6. Power to hear and determine all actions and proceedings arising from the enforcement of county home rule charter ordinances.

Approved April 4, 2003

Filed April 7, 2003

CHAPTER 88**HOUSE BILL NO. 1262**

(Representatives Devlin, Severson, Wieland)
(Senators Andrist, Every, J. Lee)

**COUNTY COMMISSIONER SERVICE ON OTHER
BOARDS**

AN ACT to create and enact a new section to chapter 11-11 of the North Dakota Century Code, relating to members of a board of county commissioners serving on other boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-11 of the North Dakota Century Code is created and enacted as follows:

Commissioners' service on other boards - Term. Except as otherwise provided in this section, a member of a board of county commissioners who is appointed to serve on another board by the board of county commissioners or who is a member of another board because of the individual's status as a member of the board of county commissioners may serve on the other board only so long as the individual is a member of the board of county commissioners. After the individual is no longer a member of the board of county commissioners, the board of county commissioners may reappoint the individual to serve on the other board unless membership on the board of county commissioners is a requirement of membership.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 89**SENATE BILL NO. 2043**

(Legislative Council)
(Judiciary A Committee)

RESTITUTION COLLECTION AND ENFORCEMENT

AN ACT to designate the offices responsible for restitution collection and enforcement activities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Restitution collection and enforcement. Except as provided in this section, the county and state offices performing restitution collection and enforcement activities as of April 1, 2001, shall continue to perform those activities. In counties in which a county office performs those activities, a county may transfer responsibility for the activities to another county office.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 90**SENATE BILL NO. 2214**

(Senators Cook, Fischer, Nichols)
(Representatives R. Kelsch, Porter, Schmidt)

COUNTY CRIMINAL APPREHENSION REWARDS

AN ACT to amend and reenact section 11-11-49 of the North Dakota Century Code, relating to rewards offered by a board of county commissioners; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-11-49 of the North Dakota Century Code is amended and reenacted as follows:

11-11-49. Board may offer reward. The board of county commissioners may offer a reward ~~of a sum not exceeding one hundred dollars nor less than ten dollars~~ for the apprehension and conviction of each ~~person~~ individual violating any of the provisions of chapters 12.1-21 and 12.1-23.

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

Approved March 21, 2003
Filed March 21, 2003

CHAPTER 91**SENATE BILL NO. 2331**

(Senators Kringstad, Kilzer, J. Lee)
(Representatives Carlisle, Meier)

NONPROFIT ARTS ORGANIZATION ASSISTANCE

AN ACT to create and enact a new section to chapter 11-11 of the North Dakota Century Code, relating to the expenditure of public funds to assist programs and activities of nonprofit organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-11 of the North Dakota Century Code is created and enacted as follows:

Programs and activities of nonprofit organizations that assist the arts - Expenditure of funds. The board of county commissioners may establish or maintain programs and activities for the benefit of nonprofit organizations that assist the arts, including the expansion of existing programs. A board of county commissioners may expend funds received from county, state, federal, or private sources for the public purposes provided for in this section. A board of county commissioners may not make an expenditure under this section to defray expenses or to assist an organization unless that organization is incorporated as a nonprofit corporation and has contracted with the board of county commissioners with respect to the manner in which the funds will be expended and services provided. The board of county commissioners shall review annually an organization that receives funds under this section to determine the organization's eligibility to receive public funds. As used in this section, "nonprofit organizations that assist the arts" means organizations recognized by the North Dakota council on the arts.

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 92

SENATE BILL NO. 2173

(Senators Trenbeath, Grindberg, Krebsbach)
(Representatives F. Klein, Monson, Tieman)

TOURISM PROMOTION PROPERTY TAX LEVY

AN ACT to amend and reenact sections 11-11.1-03 and 11-11.1-04 and subsection 29 of section 57-15-06.7 of the North Dakota Century Code, relating to property tax levy authority for tourism promotion by a job development authority or industrial development organization; and to provide an effective date.

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 exercise any other powers necessary to carry out the purposes and provisions of this chapter.

SECTION 2. AMENDMENT. Section 11-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

11-11.1-04. Tax levy for job development authorities. The board of county commissioners of a county which has a job development authority or joint job development authority shall establish a job development authority fund and levy a tax not exceeding the ~~limitation~~ limitations in subsection 29 of section 57-15-06.7. The county treasurer shall keep the job development authority fund separate from other money of the county ~~and~~. If directed by the board of county commissioners, the county treasurer shall keep a separate fund for the job development authority for the proceeds of any designated portion of the levy for promotion of tourism by the job development authority. The county treasurer shall transmit all funds received pursuant to this section within thirty days to the board of directors of the authority. The funds when paid to the authority must be deposited in a special account, or special accounts if the authority chooses to maintain a separate account for promotion of tourism, in which other revenues of the authority are deposited. Moneys received by the job development authority from any other source must also be deposited in the special ~~account~~ accounts. The moneys in the special ~~account~~ accounts may be expended by the authority as provided in sections 11-11.1-02 and 11-11.1-03.

⁴⁵ **SECTION 3. AMENDMENT.** Subsection 29 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

29. A county levying a tax for a job development authority as provided in section 11-11.1-04 or for the support of an industrial development organization as provided in section 11-11.1-06 may levy a tax not exceeding four mills on the taxable valuation of property within the county. Upon approval by a majority of electors voting on the question at a regular or special county election, a county levying a tax for a job development authority as provided in section 11-11.1-04 or for the support of an industrial development organization as provided in section 11-11.1-06 may levy a separate and additional tax for promotion of tourism in an amount not exceeding one mill on the taxable valuation of property within the county. However, if any city within the county is levying a tax for support of a job development authority or for support of an industrial development organization and the total of the county and city levies exceeds ~~four~~ five mills, the county tax levy within the city

⁴⁵ Section 57-15-06.7 was also amended by section 2 of House Bill No. 1207, chapter 95, section 16 of House Bill No. 1426, chapter 96, and section 98 of House Bill No. 1183, chapter 138.

levying under subsection 28 of section 57-15-10 must be reduced so the total levy in the city does not exceed ~~four~~ five mills.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable events beginning after December 31, 2002.

Approved April 8, 2003

Filed April 9, 2003

CHAPTER 93

SENATE BILL NO. 2056

(Senators Mathern, Robinson)

(Representatives Thoreson, Kempenich, Devlin, Ekstrom)

PARK COMMISSIONER TERMS

AN ACT to amend and reenact section 11-28-02 of the North Dakota Century Code, relating to the term of office of members appointed to serve on a board of county park commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11-28-02 of the North Dakota Century Code is amended and reenacted as follows:

11-28-02. Eligibility for appointment - Term - Vacancy - Compensation.

Any resident citizen of the county, including county, city, and township officers, ~~shall be~~ is eligible for appointment to the board of county park commissioners. Each appointed county park commissioner shall hold office for a term of ~~one year~~ three years, or until a successor is appointed and qualified. Any vacancy in ~~such the~~ board ~~shall~~ must be filled for the unexpired term by appointment by the board of county commissioners as soon as practicable. Each member of the county park board ~~shall~~ is entitled to receive the same compensation for services for each day actually engaged in the performance of the duties of the office as that paid a county commissioner but not to exceed a total of twenty-four days in any one year, and ~~in addition shall be~~ is entitled to reimbursement for actual necessary expenses incurred in the performance of ~~such the~~ the member's duties. The board of county park commissioners shall meet at the time of the regular meetings of the board of county commissioners upon the order of the chairman, and appointed members only ~~shall be~~ are entitled to compensation for attendance at ~~such the~~ the concurrent meetings.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 94**SENATE BILL NO. 2104**

(Transportation Committee)

(At the request of the Department of Transportation)

**TRANSPORTATION STRUCTURE IMPACT
DETERMINATIONS**

AN ACT to amend and reenact subsection 2 of section 11-33-18 of the North Dakota Century Code, relating to determinations of significant impact on transportation structures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 11-33-18 of the North Dakota Century Code is amended and reenacted as follows:

2. If a board of county commissioners provides for the issuance of permits, the board shall require the applicant to state whether the structure is reasonably anticipated to have a significant impact on the transportation system. A structure is deemed to have significant impact on the transportation system if, over a period of one year, it will have an average daily usage of at least ~~ten~~ twenty-five motor vehicles whose gross weight exceeds sixty thousand pounds [27215.54 kilograms]. The board shall require that, if the structure will have a significant impact on the transportation system, the director of the department of transportation be notified and be given an opportunity to comment on the application. However, approval of the director of the department of transportation of the proposed structure is not required.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 95

HOUSE BILL NO. 1207

(Representatives Timm, Price, Thorpe)
(Senators Krebsbach, O'Connell, Tollefson)

PORT AUTHORITIES

AN ACT to create and enact chapter 11-36, a new subsection to section 57-15-06.7, a new subsection to section 57-15-10, a new subsection to section 57-15-20.2, and two new sections to chapter 57-15 of the North Dakota Century Code, relating to local port authorities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 11-36 of the North Dakota Century Code is created and enacted as follows:

11-36-01. Definitions. As used in this chapter unless the context requires otherwise:

1. "Bonds" means any bonds, notes, interim certificates, debentures, or similar obligations issued by a port authority pursuant to this chapter.
2. "Governing body" means the official or officials authorized by law to exercise ordinance or other lawmaking powers of a municipality.
3. "Municipal port authority" means a port authority created pursuant to section 11-36-03.
4. "Municipality" means any political subdivision of this state.
5. "Port authority" means any regional port authority or municipal port authority created pursuant to this chapter, and the governing body of a municipality which has determined to exercise the powers of a municipal port authority, pursuant to section 11-36-03.
6. "Real property" means lands, structures, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the term real property, including not only fee simple absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.
7. "Regional port authority" means a port authority created pursuant to section 11-36-04.

11-36-02. General powers. A port authority may operate a port that includes all real and personal property, structures, machinery, equipment, and appurtenances or facilities that are part of the port or used or useful in connection with the port either as facilities for the convenience of handling equipment, passengers, and freight or as part of port or port facilities operation. In the process of operating a port, a port authority may:

1. Promote, stimulate, develop, and advance the general welfare, commerce, economic development, and prosperity of its jurisdiction and of the state and its citizens;
2. Endeavor to increase the volume of commerce within the jurisdiction of the port authority and the state through planning, advertising, acquisition, establishment, development, construction, improvement, maintenance, equipment, operation, regulation, and protection of transportation, storage, or other facilities that promote the safe, efficient, and economical handling of commerce, and through having foreign trade zone authority;
3. Cooperate and act in conjunction with other organizations, public or private, in the development of commerce, industry, manufacturing, services, natural resources, agriculture, livestock, recreation, tourism, health care, and other economic activity in the state; and
4. Support the creation, expansion, modernization, retention, and relocation of new and existing businesses and industries in the state and otherwise stimulate, assist in, and support the growth of all kinds of economic activity that will tend to promote commerce and business development, maintain the economic stability and prosperity of its jurisdiction and of the state, and thus provide maximum opportunities for employment and improvement in the standard of living of citizens of the state.

11-36-03. Creation of municipal port authority. Any municipality located near the junction of two paved and divided multilane highways, where two competing railroad intermodal lines intersect, and where two class I railroads interchange freight cars, may create by resolution of its governing body a public body corporate and politic to be known as a municipal port authority, which is authorized to exercise its functions upon the appointment and qualification of the first commissioners of the authority. The governing body by resolution may determine to exercise any or all powers granted to the authorities in this chapter until the powers have been conferred upon a municipal or regional port authority. Upon the adoption of a resolution creating a municipal port authority, the governing body of the municipality shall appoint, pursuant to the resolution, five persons as commissioners of the port authority. The commissioners who are first appointed are designated to serve for terms of one, two, three, four, and five years, respectively, but thereafter, each commissioner must be appointed for a term of five years, except that vacancies occurring otherwise than by expiration of term must be filled for the unexpired term by the governing body.

11-36-04. Creation of regional port authority.

1. Two or more municipalities, one of which is in this state located near the junction of two paved and divided multilane highways, where two competing railroad intermodal lines intersect, and where two class I railroads interchange freight cars, may create by joint resolution a public body, corporate and politic, to be known as a regional port authority, which is authorized to exercise its functions upon the issuance by the secretary of state of a certificate of incorporation. The governing bodies of the municipalities participating in the creation of a regional port authority shall appoint, pursuant to the joint resolution, no fewer than five persons as commissioners of the regional port authority. The number to be appointed and representation must be provided for in the

joint resolution. The term of office of each regional port authority commissioner must be in accordance with subsection 5. Each regional port authority, once created, shall organize, elect officers for terms of office to be fixed by agreement, and adopt and amend rules for its own procedure not inconsistent with section 11-36-07.

2. A regional port authority may be increased to serve one or more additional municipalities if each additional municipality and each of the municipalities then included in the regional port authority and the commissioners of the regional port authority, respectively, adopt a resolution consenting to the addition. If a municipal port authority for any municipality seeking to be included in the regional port authority is then in existence, the commissioners of the municipal port authority must consent to the inclusion of the municipality in the regional port authority, and if the municipal port authority has any bonds outstanding, all of the holders of the bonds must consent, in writing, to the inclusion of the municipality in the regional port authority. Upon the inclusion of any municipality in the regional port authority, all rights, contracts, obligations, and property of the municipal port authority must be in the name of and vest in the regional port authority.
3. A regional port authority may be decreased if each of the municipalities then included in the regional port authority and the commissioners of the regional port authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities. If the regional port authority has any bonds outstanding, no decrease may be effected unless all of the holders of the bonds consent to the decrease.
4. A municipality may not adopt any resolution authorized by this section without a public hearing. Notice must be given at least ten days before the hearing in a newspaper published in the municipality, or if there is no newspaper published in the municipality, then in a newspaper having general circulation in the municipality.
5. All commissioners of a regional port authority must be appointed for terms of five years each, except that a vacancy occurring otherwise than by expiration of term must be filled for the unexpired term in the same manner as the original appointments.

11-36-05. Certificate of incorporation of regional port authority.

1. Upon the appointment and qualification of the commissioners first appointed to a regional port authority, the commissioners shall submit to the secretary of state a certified copy of each resolution adopted pursuant to section 11-36-03 by the municipalities included in the regional port authority. Upon receipt of the resolution, the secretary of state shall issue a certificate of incorporation to the regional port authority.
2. When a regional port authority is increased or decreased pursuant to section 11-36-04, it shall forward to the secretary of state a certified copy of each resolution adopted pursuant to that section, and upon receipt of the resolution, the secretary of state shall issue an amended certificate of incorporation.

11-36-06. Proof of existence of authority.

1. In any proceeding involving the validity or enforcement of, or relating to, any contract of a municipal port authority, created pursuant to section 11-36-03, the municipal port authority is deemed to have become established and authorized to transact its business and exercise its powers upon proof of the adoption by the municipality of the resolution creating the municipal port authority and of the appointment and qualification of the first commissioners. Duly certified copies of the resolution creating the authority and of the certificates of appointment of the commissioners are admissible in evidence in any proceeding.
2. In any proceeding involving the validity or enforcement of, or relating to, any contract of a regional port authority, the regional port authority is deemed to have become established and authorized to transact its business and exercise its powers upon proof of the issuance by the secretary of state of a certificate of incorporation of such regional port authority. A copy of such certificate of incorporation, duly certified by the secretary of state, is admissible in evidence in any suit, action, or proceeding.

11-36-07. Commissioners - Compensation - Meetings - Officers.

1. A commissioner of an authority may not receive compensation for services but is entitled to the reimbursement of necessary expenses incurred in the discharge of duties. Each commissioner shall hold office until a successor has been appointed and has qualified. The certificates of the appointment and reappointment of commissioners must be filed with the port authority.
2. The powers of each port authority are vested in the commissioners.
3. There must be elected a chairman and vice chairman from among the commissioners. A port authority may employ an executive director, secretary, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. For legal services it may require, a port authority may call upon the chief law officer of the municipality or municipalities included in the port authority or may employ its own counsel and legal staff. A port authority may delegate to one or more of its agents or employees the powers or duties as it may deem proper.

11-36-08. Specific powers of a port authority. A port authority has all the powers necessary or convenient to carry out the purposes of this chapter, including the power to certify annually to the governing bodies creating it, the amount of tax to be levied by the governing bodies for port purposes, including the power:

1. To sue and be sued.
2. To execute such contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter.

3. To plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect transportation, storage, or other facilities. For such purposes a port authority may by purchase, gift, devise, lease, or otherwise acquire property, including easements.
4. To establish comprehensive port zoning regulations in accordance with the laws of this state. For the purposes of this chapter, a regional port authority has the same powers as all other political subdivisions in the adoption and enforcement of comprehensive port zoning regulations as provided for by the laws of this state.
5. To acquire, by purchase, gift, devise, lease, or otherwise, existing transportation, storage, or other facilities that may be necessary or convenient to carry out this chapter. A port authority may not acquire or take over any transportation, storage, or other facilities owned or controlled by another port authority, municipality, or public agency of this or any other state without the consent of that port authority, municipality, or public agency.
6. To provide financial and other support to organizations in its jurisdiction, including corporations whose purpose is to promote, stimulate, develop, and advance the general welfare, economic development, and prosperity of its jurisdiction and of the state and its citizens by stimulating, assisting in, and supporting the growth of all kinds of economic activity, including the creation, expansion, modernization, retention, and relocation of new and existing businesses and industries in the state, all of which will tend to promote business development, maintain the economic stability and prosperity of the state, and thus provide maximum opportunities for employment and improvement in the standard of living of citizens of the state.

11-36-09. Disposal of port property. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by section 11-36-13, an authority, by sale, lease, or otherwise, may dispose of any transportation, storage, or other facility or other property, or portion thereof or interest therein, acquired pursuant to this chapter. A disposal must be in accordance with the laws of this state governing the disposition of other public property, except that in the case of disposal to another port authority, a municipality, or an agency of the state or federal government for use and operation as a public port, the sale, lease, or other disposal may be effected in such manner and upon such terms as the commissioners of the port authority may deem in the best interest of transportation. Upon the termination of a port and controlling authority, remaining funds shall revert to the general fund of the political subdivision that levied a tax in support of the port.

11-36-10. Bonds and other obligations.

1. A port authority may borrow money for any of its corporate purposes and issue its bonds for that purpose, including refunding bonds, in the form and upon the terms as it may determine, payable out of any revenues of the port authority, including grants or contributions from the federal government or other sources, which bonds may be sold at not less than ninety-eight percent of par plus the interest accrued on the bonds to the date of the delivery of the bonds.

2. Bond issues sold at private sale must bear interest at a rate or rates and be sold at a price resulting in an average net interest cost not exceeding twelve percent per annum. There is no interest rate ceiling on those issues sold at public sale or to this state or any of its agencies or instrumentalities.
3. Any bonds issued pursuant to this chapter by a port authority, or by a governing body exercising the powers of a port authority, are payable, as to principal and interest, solely from revenues of a port or facilities, and must so state on the face of the bond, but if any issue of bonds constitutes an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, each bond of the issue is, subject to the requirements of subsection 9, an equally valid and binding special obligation of the authority or municipality, as the case may be, in accordance with its terms, in an amount proportionate to the total amount of the issue which is within the limitation or restriction. Neither the commissioners of a port authority nor the governing body of a municipality nor any person executing such bonds is liable personally thereon by reason of the issuance thereof, except to the extent that the bonds, if constituting an indebtedness, exceed any applicable limitation or restriction.
4. In case any of the commissioners or officers of a port authority or municipality whose signatures appear on any bonds or coupons cease to be such commissioners or officers after authorization but before the delivery of the bonds, the signature, nevertheless, is valid and sufficient for all purposes, the same as if the commissioners or officers had remained in office until delivery. Notwithstanding any other provision of any law, any bonds issued pursuant to this chapter are fully negotiable.
5. Any bond reciting in substance that it has been issued by the port authority or municipality pursuant to this chapter and for a purpose or purposes authorized by this chapter is conclusively deemed, in any proceeding involving the validity or enforceability of the bond or the security therefor, to have been issued pursuant to this chapter and for such purpose or purposes.
6. Bonds issued by a port authority or municipality pursuant to this chapter are declared to be issued for an essential public and governmental purpose and, together with interest on the bonds, and income from the bonds are exempt from all taxes.
7. For the security of any such bonds, the port authority or municipality by resolution may make any covenant, agreement, or indenture authorized to be made as security for revenue bonds issued under chapter 40-35. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenues referred to in this chapter, before the payment of current costs of operation and maintenance of the facilities.
8. Whenever bonds are issued under this chapter and made payable from revenues of a port involving municipalities with over ten thousand population, subject to requirements of subsection 9, the governing body of the municipality, if at any time all revenues, including taxes, appropriated and to that time collected for the bonds are insufficient to pay principal or interest then due, shall levy a general tax upon all of the

taxable property in the municipality for the payment of the deficiency. If at any time a deficiency is likely to occur within one year for the payment of principal and interest due on the bonds, the governing body, in its discretion, may levy a general tax upon all the taxable property in the municipality for the payment of the deficiency. The taxes are not subject to any limitation of rate or amount applicable to other municipal taxes.

9. For bonds issued under this section to be an obligation of a municipality or port authority, the issuance of the bonds must be approved by a majority vote of the governing body of each municipality involved or, within thirty days after the port authority decides it wishes to issue the bonds, the municipality or port authority must put the question, specifying the amount of the bond at issue, to the people at an election. The question may be put at a general election, a primary election, a municipal election, or at an election called for the purpose. If a majority of the qualified electors voting on the issue vote in favor of issuing the bonds, the port authority or municipality, to the amount authorized in the election, may pledge the general obligation of the port authority or municipality to guarantee the repayment of the principal and interest on the bonds.

11-36-11. Operation and use privileges.

1. In connection with the operation of a port or port facility owned or controlled by a port authority, the port authority may enter a contract, lease, and other arrangement for terms not to exceed thirty years with any person:
 - a. Granting the privilege of using or improving the port or port facility or any portion or space in the port or port facility for commercial purposes;
 - b. Conferring the privilege of supplying goods, commodities, things, services, or facilities at the port or port facility; and
 - c. Making available services to be furnished by the authority or its agents at the port or port facility.
2. In each case the port authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class or privilege or service and must be established with due regard to the property and improvements used and the expenses of operation to the authority; provided that in no case may the public be deprived of its rightful, equal, and uniform use of the port, port facility, or portion of a port or port facility.
3. Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by section 11-36-13, a port authority by contract, lease, or other arrangements, upon a consideration fixed by it, may grant to any qualified person for a term not to exceed thirty years the privilege of operating, as agent of the port authority or otherwise, any port owned or controlled by the port authority; provided that no person may be granted any authority to operate a port other than as a public port or to enter any contract, lease, or other arrangement in

connection with the operation of the port which the port authority might not have undertaken under subsection 1.

11-36-12. Regulations. A port authority may adopt, amend, and repeal such reasonable resolutions, regulations, and orders as it determines necessary for the management, government, and use of any port or port facility owned by it or under its control. No rule, regulation, order, or standard prescribed by the port authority may be inconsistent with, or contrary to, any Act of the Congress of the United States or any regulation promulgated or standard established pursuant to an Act of Congress. The port authority shall keep on file at the principal office of the port authority for public inspection a copy of all its regulations.

11-36-13. Federal and state aid. A port authority may accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes of this chapter. All federal moneys accepted under this section must be accepted and expended by the port authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section must be accepted and expended by the port authority upon such terms and conditions as are prescribed by the state.

11-36-14. Tax levy may be certified by port authority or municipality. The port authority may certify annually to the governing bodies the amount of tax to be levied by each municipality participating in the creation of the port authority, and the municipality shall levy the amount certified, pursuant to provisions of law authorizing political subdivisions of this state to levy taxes for port purposes. The levy made may not exceed the maximum levy permitted by the laws of this state for port purposes. The municipality shall collect the taxes certified by a port authority in the same manner as other taxes are levied and collected. The proceeds of such taxes must be deposited in a special account or accounts in which other revenues of the port authority are deposited and may be expended by the port authority as provided in this chapter. Before issuance of bonds under section 11-36-10, the port authority or the municipality by resolution may covenant and agree that the total amount of the taxes then authorized by law, or such portion of the taxes as may be specified by the resolution, will be certified, levied, and deposited annually until the bonds and interest are fully paid.

11-36-15. County tax levy for port purposes. In counties supporting ports or port authorities, a levy not exceeding the limitation in section 2 of this Act may be made but this levy may not apply to any municipality that has a port levy.

11-36-16. Joint operations.

1. For the purposes of this section, unless otherwise qualified, the term "public agency" includes municipality and port authority, any agency of the state government and of the United States, and any political subdivision and agency of an adjoining state; and the term "governing body" includes commissioners of a port authority, the governing body of a municipality, and the head of an agency of a state or the United States if the public agency is other than a port authority or municipality. All powers, privileges, and authority granted by this chapter may be exercised and enjoyed by an authority jointly with any public agency of this state, and jointly with any public agency of any adjoining state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise of enjoyment. Any agency of

the state government, when acting jointly with any authority, may exercise and enjoy all the powers, privileges, and authority conferred by this chapter upon an authority.

2. Any two or more public agencies may enter agreements with each other for joint action pursuant to the provisions of this section. Each agreement must specify its duration, the proportionate interest which each public agency must have in the property, facilities, and privileges involved in the joint undertaking, the proportion of costs of operation, and other items to be borne by each public agency, and such other terms as are deemed necessary or required by law. The agreement may also provide for amendments and termination; disposal of all or any of the property, facilities, and privileges jointly owned, prior to, or at such times as said property, facilities, and privileges, or any part thereof, cease to be used for the purposes provided in this chapter, or upon termination of the agreement; the distribution of the proceeds received upon any disposal, and of any funds or other property jointly owned and undisposed of; the assumption of payment of any indebtedness arising from the joint undertaking which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.
3. Public agencies acting jointly under this section shall create a joint board to consist of members appointed by the governing body of each participating public agency. The number to be appointed, the term, and any compensation must be provided in the joint agreement. Each joint board shall organize, select officers for such terms as are fixed by the agreement, and adopt and amend rules for its own procedure. The joint board has power, as agent of the participating public agencies, to plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any port or port facility to be jointly acquired, controlled, and operated, and the board may be authorized by the participating public agencies to exercise on behalf of its constituent public agencies all the powers of each with respect to the port or port facility, subject to the limitations of subsection 4.
4.
 - a. The total expenditures to be made by the joint board for any purpose in any calendar year must be as determined by a budget approved by the constituent public agencies on or before the preceding December first, or as otherwise specifically authorized by the constituent public agencies.
 - b. A port, port facility, or real property, the cost of which is in excess of sums fixed by the joint agreement or allotted in the annual budget, may not be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.
 - c. The joint board may not dispose of any port, port facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies, provided that the joint board, without such consent, may enter contracts, leases, or other arrangements contemplated by section 11-36-11.
 - d. Any resolutions, regulations, or orders of the joint board dealing with subjects authorized by section 11-36-11 become effective only

upon approval of the governing bodies of the constituent public agencies, provided that upon such approval, the resolutions, regulations, or orders of the joint board have the same force and effect in the territories or jurisdictions involved as the ordinances, resolutions, regulations, or orders of each public agency would have in its own territory or jurisdiction.

5. For the purpose of providing the joint board with moneys for the necessary expenditures in carrying out this section, a joint fund must be created and maintained, into which must be deposited the share of each of the constituent public agencies as provided by the joint agreement. Any federal, state, or other grants, contributions, or loans, and the revenues obtained from the joint ownership, control, and operation of any port or port facility under the jurisdiction of the joint board must be paid into the joint fund. Disbursements from such fund must be made by order of the board, subject to the limitations prescribed in subsection 4.

11-36-17. Public purpose. 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.

11-36-18. Port property and income exempt from taxation. Any property in this state acquired by a port authority for port purposes pursuant to this chapter, and any income derived by the port authority from the ownership, operation, or control of this property, is exempt from taxation to the same extent as other property used for public purposes.

11-36-19. Municipal cooperation. For the purpose of aiding and cooperating in the planning, undertaking, construction, or operation of ports and port facilities pursuant to this chapter, any municipality for which an authority has been created, upon such terms, with or without consideration, may:

1. Lend or donate money to the authority.
2. Provide that all revenues received by the municipality for port purposes be transferred, paid, or credited to a port authority fund. The city auditor or county treasurer may establish and maintain the fund to account for port authority revenues and shall make payments from the fund for invoices that have been submitted and approved by the governing body of the port authority. On request of the city auditor or county treasurer and during an audit, the governing board of the port authority shall supply its records. The records must be provided on a timely basis. The fund may not revert to the governing body of the municipality at the end of any fiscal year. The fund must be used exclusively for the establishment and maintenance of port facilities.

3. Cause water, sewer, or drainage facilities, or any other facilities which it is empowered to provide, to be furnished adjacent to or in connection with the port or port facilities.
4. Dedicate, sell, convey, or lease any of its interest in any property, or grant easements, licenses, or any other rights or privileges therein to the port authority.
5. Furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, and walks from established streets or roads to ports or port facilities.
6. Take any action, whether or not specifically authorized in this section and not otherwise prohibited by law, that is necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of ports and port facilities.
7. Enter agreements with the port authority respecting action to be taken by the municipality pursuant to this section.

11-36-20. Out-of-state port jurisdiction authorized - Reciprocity with adjoining states and governmental agencies.

1. This state or any public entity within this state having any powers with respect to planning, establishing, acquiring, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, or protecting ports or port 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.
2. Any state adjoining this state or any public entity of that state may plan, establish, acquire, develop, construct, enlarge, improve, maintain, equip, operate, regulate, and protect ports and port facilities with this state, subject to the laws of this state applicable to ports and port facilities.
3. The powers granted in this section may be exercised jointly by two or more states or public entities, including this state and its governmental agencies, in any agreed-upon combination.

11-36-21. Supplemental authority. In addition to the general and special powers conferred by this chapter, every port authority may exercise any power necessary incidental to the exercise of general and special powers.

11-36-22. Debt service fund. A port authority may create a debt service fund and accumulate in the fund a sum determined by the governing body, together with interest on that sum, for the use, repairs, maintenance, and capital outlays of a port.

⁴⁶ **SECTION 2.** A new subsection to section 57-15-06.7 of the North Dakota Century Code is created and enacted as follows:

Counties supporting ports or port authorities may levy a tax not exceeding four mills in accordance with section 11-36-15.

⁴⁷ **SECTION 3.** A new subsection to section 57-15-10 of the North Dakota Century Code is created and enacted as follows:

Taxes levied for port purposes in accordance with section 5 of this Act may be levied in an amount not exceeding four mills.

⁴⁸ **SECTION 4.** A new subsection to section 57-15-20.2 of the North Dakota Century Code is created and enacted as follows:

A township levying a tax for port purposes in accordance with section 6 of this Act may levy a tax not exceeding four mills.

SECTION 5. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Tax levy for port purposes. In cities supporting ports for which no levy has been made by a taxing district within the corporate limits of such city, a levy not exceeding the limitation in section 3 of this Act may be made for such purposes.

SECTION 6. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Township levy for port purposes. The electors of each township may vote at the annual meeting to levy a tax for the purpose of supporting a port or port authority in an amount not exceeding the limitation in section 4 of this Act. The tax levy provided in this section does not apply to any city, park district, or other taxing district that already has a port levy.

Approved April 9, 2003
Filed April 9, 2003

⁴⁶ Section 57-15-06.7 was also amended by section 16 of House Bill No. 1426, chapter 96, section 98 of House Bill No. 1183, chapter 138, and section 3 of Senate Bill No. 2173, chapter 92.

⁴⁷ Section 57-15-10 was also amended by section 17 of House Bill No. 1426, chapter 96, and section 99 of House Bill No. 1183, chapter 138.

⁴⁸ Section 57-15-20.2 was also amended by section 18 of House Bill No. 1426, chapter 96.

CHAPTER 96

HOUSE BILL NO. 1426

(Representatives Skarphol, Belter, Glassheim)
(Senators Andrist, Nelson, Wardner)

COMMERCE AUTHORITIES

AN ACT to provide for the creation of commerce authorities; to create and enact a new subsection to section 57-15-06.7, a new subsection to section 57-15-10, a new subsection to section 57-15-20.2, a new section to chapter 57-15, a new subdivision to subsection 2 of section 57-38-30.3, and a new subsection to section 57-39.2-04 of the North Dakota Century Code, relating to tax levies for commerce authorities and exemption from income, sales, and use taxes; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 15 of this Act, unless the context requires otherwise:

1. "Bonds" means any bonds, notes, interim certificates, debentures, or similar obligations issued by a commerce authority.
2. "Commerce authority" means an authority created under section 3 of this Act.
3. "Political subdivision" means any county, city, or other unit of local government. The term includes a job development authority created under chapter 11-11.1 or 40-57.4.
4. "Project" means facilities including all real and personal property, structures, equipment, and appurtenances owned or operated by a commerce authority.

SECTION 2. Purposes of commerce authority. A commerce authority may be created to:

1. Promote, stimulate, develop, and advance commerce, economic development, and general prosperity within its jurisdiction and this state;
2. Endeavor to increase the volume of commerce within its jurisdiction and this state through planning, advertising, acquisition, development, construction, improvement, maintenance, operation, and regulation, of transportation, storage, or other facilities that promote the safe, efficient, and economical handling of commerce;
3. Cooperate and act in conjunction with other organizations in the development and promotion of commerce, industry, manufacturing, services, natural resources, agriculture, livestock, recreation, tourism, health care, and other economic activity; and
4. Support the creation, expansion, modernization, retention, and relocation of new and existing businesses and industries and otherwise

stimulate, assist in, and support growth of all kinds of economic activity that promote commerce and business development, maintain economic stability and prosperity of its jurisdiction and this state, and thus provide maximum opportunities for employment and improvement in the standard of living of citizens of its jurisdiction and this state.

SECTION 3. Creation of commerce authority. One or more political subdivisions may form a commerce authority as follows:

1. Any political subdivision may create, by resolution of its governing body, a public body corporate and politic to be known as a commerce authority that may exercise its functions upon the appointment and qualification of the first commissioners of the commerce authority. The governing body by resolution may determine to exercise any powers granted to a commerce authority until the powers have been conferred upon a commerce authority. Upon the adoption of a resolution creating a commerce authority, the governing body of the political subdivision shall appoint, pursuant to the resolution, no fewer than five individuals as commissioners of the commerce authority.
2. Two or more political subdivisions, whether in this state or in an adjoining state provided that at least one political subdivision is in this state, may create by execution of a joint agreement authorized by resolution of the governing body of each participating subdivision, a commerce authority that may exercise its functions upon the issuance by the secretary of state of a certificate of incorporation. The governing bodies of the participating political subdivisions shall appoint, pursuant to the joint agreement, no fewer than five persons as commissioners of the commerce authority.
3. A commerce authority may be increased to serve one or more additional political subdivisions if each additional political subdivision and each of the political subdivisions then participating in the authority, adopt a resolution consenting to the addition.
4. A commerce authority may be decreased if each of the political subdivisions in the commerce authority consent to the decrease and make provisions for the retention or disposition of its assets and liabilities. If the commerce authority has any bonds outstanding, no decrease may be effected unless all of the holders of the bonds consent to the decrease.

SECTION 4. Filing of agreement and resolutions - Certificate of incorporation - Beginning of corporate existence. The joint agreement, if applicable, and a certified copy of the resolution of each political subdivision creating or agreeing to participate in a commerce authority must, be filed with the secretary of state. If the agreement and resolutions conform to the requirements of section 3 of this Act, the secretary of state shall issue a certificate of incorporation that states the name of the commerce authority and the date of incorporation. The existence of the commerce authority as a political subdivision of this state begins upon the issuance of the certificate of incorporation. The certificate of incorporation is conclusive evidence of the existence of the commerce authority.

SECTION 5. Commissioners - Compensation - Officers.

1. The power of each commerce authority is vested in its commissioners. A commerce authority may adopt and amend rules for its own operation subject to the agreement of the participating political subdivisions and sections 1 through 15 of this Act.
2. A commissioner of a commerce authority may not receive compensation for services but is entitled to reimbursement of necessary expenses incurred in the discharge of duties at the rates provided in sections 44-08-04 and 54-06-09.
3. The commissioners of a commerce authority shall elect a chairman, a vice chairman, and a secretary-treasurer from among the commissioners.
4. The commissioners of a commerce authority may appoint or elect an executive director, and any other officers, agents, and employees determined to be necessary and shall determine their qualifications, duties, and compensation. The commissioners of a commerce authority may delegate powers and duties of the commerce authority to one or more of its officers, agents, or employees.

SECTION 6. Powers of political subdivisions in aid of a commerce authority. A political subdivision creating or participating in a commerce authority may:

1. Lend or donate money to the commerce authority.
2. Provide that all or a portion of the taxes or funds available to the political subdivision for economic development purposes be transferred or paid directly to the commerce authority.
3. Cause water, sewer, drainage, or any other facilities that the political subdivision is authorized to provide to be furnished adjacent to or in connection with a project.
4. Dedicate, sell, convey, or lease any of the political subdivision's interest in any property or grant easements, licenses, or any other rights or privileges therein to the commerce authority.
5. Plan, dedicate, close, pave, install, grade, or regrade, to the extent allowed by title 24, streets, roadways, and walks from established streets or roads to a project.
6. Aid and cooperate with the commerce authority in the planning, construction, or operation of a project.
7. Enter agreements with the commerce authority regarding action to be taken by the political subdivision under this section.
8. Establish the geographical boundaries of the commerce authority within or coextensive with the geographical boundaries of one or more of the participating political subdivisions.

9. Establish the extent to which the financial incentives provided under sections 1 through 15 of this Act will apply to the commerce authority.
10. Acquire property to carry out the purposes of sections 1 through 15 of this Act by condemnation and the exercise of eminent domain in the manner provided in chapter 32-15 and other laws applicable to political subdivisions in exercising the right of eminent domain.

SECTION 7. Powers of commerce authority. A commerce authority has all the powers necessary or convenient to carry out the purposes of sections 1 through 15 of this Act, including the power to:

1. Execute contracts and other instruments.
2. Sue and be sued.
3. Plan, acquire, develop, construct, improve, maintain, equip, operate, and regulate transportation, storage, or other facilities.
4. Acquire by lease, purchase, gift, or other lawful means and to hold in its name for its use and control both real and personal property and easements and rights of way within or without the limits of the commerce authority.
5. Convey, sell, dispose of, or lease personal and real property.
6. Employ or procure services of engineers, attorneys, technical experts, and other persons to assist, advise, and act for the commerce authority.
7. Accept, receive, disburse, and expend federal, state, local, and other moneys, public or private, made available by grant or loan.
8. Cooperate and contract with this state or any other governmental entity to obtain infrastructure and services.
9. Develop, obtain, and furnish water supply, treatment, storage, and transportation facilities and electric, natural gas, and telecommunications facilities and services.
10. Obtain local, state, and federal permits necessary to develop resources and infrastructure authorized by sections 1 through 15 of this Act.
11. Issue warrants in anticipation of taxes levied to pay current and anticipated expenses relative to the development and operation of its assets.
12. Create a debt service fund and accumulate in the fund a sum determined by the commerce authority, together with interest on that sum, for the use, repair, maintenance, and capital outlays of the commerce authority.
13. Adopt, amend, and repeal such reasonable resolutions, regulations, and orders as necessary for the management and use of a project owned or operated by the commerce authority.

SECTION 8. Bonds and other obligations.

1. A commerce authority may borrow money and issue bonds, including refunding bonds, in the form and upon the terms as it may determine, payable out of any revenues of the commerce authority.
2. Any bonds issued under this section are payable, as to principal and interest, solely from revenues of the commerce authority, and must so state on the face of the bond. If any issue of bonds constitutes an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, each bond of the issue is, subject to the requirements of subsection 8, an equally valid and binding special obligation of the commerce authority or participating political subdivision, as the case may be, in accordance with its terms, in an amount proportionate to the total amount of the issue which is within the limitation or restriction. A commissioner of a commerce authority or an individual executing the bonds is not liable personally on the bonds by reason of the issuance of the bonds, except to the extent that the bonds, if constituting an indebtedness, exceed any applicable limitation or restriction.
3. If any commissioner or officer of a commerce authority whose signature appears on any bonds or coupons ceases to be a commissioner or officer after authorization but before the delivery of the bonds, the signature, is valid and sufficient for all purposes, the same as if the commissioner or officer had remained in office until delivery.
4. Any bond reciting in substance that the bond has been issued by the commerce authority under this section and for a purpose authorized by sections 1 through 15 of this Act is conclusively deemed, in any proceeding involving the validity or enforceability of the bond or the security of the bond to have been issued under this section and for that purpose.
5. Bonds issued by a commerce authority under this section are declared to be issued for an essential public government purpose, and together with interest and income on the bonds, are exempt from all individual and corporate taxes imposed under sections 57-35.3-03, 57-38-29, 57-38-30, and 57-38-30.3.
6. For the security of the bonds, the commerce authority by resolution may make any covenant, agreement, or indenture authorized to be made as security for revenue bonds issued under chapter 40-35. The sums required to pay principal and interest and to create and maintain a reserve for the bonds may be payable from any revenues referred to in sections 1 through 15 of this Act, before the payment of current costs of operation and maintenance of the facilities.
7. When bonds are issued under this section and made payable from revenues of a commerce authority involving political subdivisions with a population over ten thousand, subject to the requirements of subsection 8, the governing bodies of the political subdivisions, if at any time all revenues, including taxes, appropriated and to that time collected for the bonds are insufficient to pay the principal or interest then due, shall levy a general tax upon all of the taxable property in the

political subdivisions for the payment of the deficiency. If a deficiency is likely to occur within one year for the payment of principal and interest due on the bonds, the governing bodies, in their declaration, may levy a general tax upon all the taxable property in the political subdivisions for the payment of the deficiency. The taxes are not subject to any limitation of rate or amount applicable to other political subdivisions taxes.

8. For bonds issued under this section to be an obligation of a political subdivision or commerce authority, the issuance of the bonds must be approved by a majority vote of the governing body of each political subdivision involved or, within thirty days after the commerce authority decides to issue the bonds, the political subdivision or commerce authority must put the question, specifying the amount of the bond at issue, to the electors at any primary, general, or special election. If a majority of the qualified electors voting on the issue vote in favor of issuing the bonds, the commerce authority or political subdivision, to the amount authorized in the election, may pledge the general obligation of the commerce authority or political subdivision to guarantee the repayment of the principal and interest on the bonds.

SECTION 9. Operation and use privileges.

1. In connection with the operation of a project owned or controlled by a commerce authority, the commerce authority may enter a contract, lease, and other arrangement with any person:
 - a. Granting the privilege of using or improving the project or any portion or space in the project for commercial purposes.
 - b. Conferring the privilege of supplying goods or services at the project.
 - c. Making available services to be furnished by the commerce authority or its agents at the project.
2. The commerce authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class or privilege or service.

SECTION 10. Sales and use tax incentives. The elected governing body of a participating political subdivision may offer sales and use tax exemptions from sales and use taxes the participating political subdivision has imposed for tangible personal property purchased and made a part of the commerce authority's infrastructure if the tangible personal property is placed within the geographic boundaries of the political subdivision and is necessary and directly services infrastructure needs of the commerce authority.

SECTION 11. Commerce authority property and income exempt from taxation. Any property in this state acquired by a commerce authority for the purposes of the commerce authority, and any income derived by the commerce authority from the ownership, operation, or control of the property, is exempt from taxation to the same extent as other property used for public purposes.

SECTION 12. Out-of-state jurisdiction authorized - Reciprocity with adjoining governmental agencies. A political subdivision creating a commerce

authority may exercise those powers within any political subdivision or jurisdiction adjoining this state, subject to the laws of that political subdivision.

SECTION 13. Tax levy by political subdivision. The commerce authority may certify annually to the governing bodies the amount of tax requested to be levied by each political subdivision participating in the commerce authority. The governing body of each political subdivision shall consider the levy request of the commerce authority and determine the amount to be levied. The levy may not exceed the maximum levy permitted for commerce authority purposes. Each political subdivision shall collect the taxes levied on behalf of a commerce authority in the same manner as other taxes are levied and collected. The proceeds of the taxes must be deposited in a special account or accounts in which other revenues of the commerce authority are deposited and may be expended by the commerce authority as provided in sections 1 through 15 of this Act. Before issuance of bonds under section 9 of this Act, the commerce authority by resolution may covenant and agree that the total amount of the taxes authorized by law, or the portion of the taxes specified by the resolution, will be certified and deposited annually until the bonds and interest are fully paid.

SECTION 14. Maximum tax levy - county levy not applied in political subdivision making levy. In a political subdivision that is a party to an agreement creating a commerce authority, a levy, not exceeding four mills, may be made for the purposes of the commerce authority. A county levy under section 57-15-06.7 does not apply to any other political subdivision within that county making a levy for the purposes of the commerce authority.

SECTION 15. Favorable rates. A commerce authority may charge favorable rates for services provided by the commerce authority to persons taxed for the commerce authority.

⁴⁹ **SECTION 16.** A new subsection to section 57-15-06.7 of the North Dakota Century Code is created and enacted as follows:

Counties supporting commerce authorities may levy a tax not exceeding four mills in accordance with section 14 of this Act.

⁵⁰ **SECTION 17.** A new subsection to section 57-15-10 of the North Dakota Century Code is created and enacted as follows:

Taxes levied for commerce authority purposes may be levied in an amount not exceeding four mills.

⁵¹ **SECTION 18.** A new subsection to section 57-15-20.2 of the North Dakota Century Code is created and enacted as follows:

⁴⁹ Section 57-15-06.7 was also amended by section 2 of House Bill No. 1207, chapter 95, section 98 of House Bill No. 1183, chapter 138, and section 3 of Senate Bill No. 2173, chapter 92.

⁵⁰ Section 57-15-10 was also amended by section 3 of House Bill No. 1207, chapter 95, and section 99 of House Bill No. 1183, chapter 138.

⁵¹ Section 57-15-20.2 was also amended by section 4 of House Bill No. 1207, chapter 95.

A township levying a tax for commerce authority purposes may levy a tax not exceeding four mills.

SECTION 19. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Township levy for commerce authority purposes. The electors of each township may vote at the annual meeting to levy a tax for the purpose of supporting a commerce authority in an amount not exceeding the limitation in section 18 of this Act. The tax levy provided in this section does not apply to any city, park district, or other taxing district that already has a commerce authority levy.

⁵² **SECTION 20.** 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 interest and income from bonds issued under this Act.

⁵³ **SECTION 21.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from all sales of tangible personal property purchased by a commerce authority and made a part of the infrastructure of a commerce authority, otherwise taxable under this chapter, if the personal property is placed within the geographic boundaries of the political subdivisions that created the commerce authority and is necessary and directly services infrastructure needs of the commerce authority. The commissioner shall issue a certificate of exemption to a political subdivision exempted by this subsection, and the political subdivision shall present the certificate of exemption to each retailer whenever the exemption is claimed.

SECTION 22. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

SECTION 23. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 11, 2003
Filed April 11, 2003

⁵² Section 57-38-30.3 was also amended by section 2 of Senate Bill No. 2098, chapter 527, section 2 of Senate Bill No. 2099, chapter 529, section 2 of Senate Bill No. 2367, chapter 526, section 1 of Senate Bill No. 2101, chapter 530, and section 4 of Senate Bill No. 2159, chapter 524.

⁵³ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 1 of House Bill No. 1328, chapter 536, section 6 of Senate Bill No. 2096, chapter 539, section 7 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, section 10 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.

CORRECTIONS, PAROLE, AND PROBATION

CHAPTER 97

HOUSE BILL NO. 1074

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

INMATE TRANSFER TO STATE HOSPITAL REPEAL

AN ACT to repeal sections 12-47-27, 12-47-28, and 12-47-29 of the North Dakota Century Code, relating to transfers of penitentiary inmates to the state hospital.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 12-47-27, 12-47-28, and 12-47-29 of the North Dakota Century Code are repealed.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 98**HOUSE BILL NO. 1271**

(Representatives Grande, Ekstrom, Hunskor, Wald)
(Senators Lyson, Trenbeath)

FEMALE INMATE HOUSING

AN ACT to create and enact a new section to chapter 12-47 of the North Dakota Century Code, relating to the housing of female inmates.

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:

Director to contract for housing female inmates. If there is no qualified state facility available, the director of the department of corrections and rehabilitation shall contract with a county for the housing of female inmates in the county jail, to the extent space is available in the county jail. The county jail must be designed in a manner that can adequately segregate the female inmates from the male inmates. Any county with which the department contracts must have available and must provide the female inmates access to educational and vocational programs, chemical dependency treatment programs, mental health programs, medical services, and adequate recreational facilities.

Approved April 7, 2003

Filed April 7, 2003

CHAPTER 99

SENATE BILL NO. 2339

(Senators Lyson, Nelson)
(Representatives DeKrey, Wieland)

INTERSTATE TRANSFER OF PROBATIONERS

AN ACT to provide for the interstate transfer or travel of probationers; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Interstate transfer or travel of probationers - Fees.

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.
2. Any probationer residing in the state who requests a travel permit to travel to another state shall pay to the department a travel permit fee of ten dollars. In the case of illness or death in the probationer's family, the department may waive the travel permit fee for hardship.
3. The department shall transfer all funds collected or paid under this section to the state treasury for deposit in the probationer violation transportation fund. The funds deposited in this fund may be spent pursuant to legislative appropriation for the purpose of defraying the costs of returning to the state probationers who violate their conditions of supervision. The department may contract with a private entity to assist in the administration of the fund.
4. The department shall adopt rules for implementation of this section.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the probationer violation transportation fund, not otherwise appropriated, the sum of \$165,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation for the purpose of defraying the costs of returning to the state probationers who violate their conditions of supervision, for the biennium beginning July 1, 2003, and ending June 30, 2005.

Approved April 14, 2003
Filed April 14, 2003

CHAPTER 100**SENATE BILL NO. 2223**

(Senators Flakoll, Brown, Nelson)

(Representatives Boehning, Iverson, Meier)

**FINGERPRINTING POLITICAL SUBDIVISION
APPLICANTS**

AN ACT to authorize for a city or county to require the submission of fingerprints of an applicant for certain city or county employment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. City or county fingerprinting - Criminal history record. The governing body of a city by ordinance or a county by ordinance or resolution may require each applicant for a specified occupation with the city or county to provide two sets of fingerprints. The city or county may 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. Federal bureau of investigation criminal history record information obtained by a city or county is confidential. For a request for nationwide criminal history record information made by the city or county 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. The bureau of criminal investigation may charge appropriate fees for criminal history information.

Approved April 8, 2003

Filed April 9, 2003

CHAPTER 101

SENATE BILL NO. 2346

(Senators Traynor, Lyson, Robinson)
(Representatives Carlisle, DeKrey, Grande)

PEACE OFFICERS STANDARDS AND TRAINING BOARD

AN ACT to create and enact three new sections to chapter 12-63 of the North Dakota Century Code, relating to membership on the peace officers standards and training board, temporary suspensions, and cost of prosecution; to amend and reenact sections 12-62-01, 12-62-01.1, 12-62-02, 12-62-07, 12-62-10, 12-63-01, 12-63-02, 12-63-03, 12-63-04, 12-63-05, 12-63-09, 12-63-10, and 12-63-12 of the North Dakota Century Code, relating to training responsibilities, statistics collection, and the peace officers standards and training board; to repeal sections 12-62-03, 12-62-05, 12-62-06, and 12-62-09 of the North Dakota Century Code, relating to law enforcement training; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-62-01 of the North Dakota Century Code is amended and reenacted as follows:

12-62-01. Criminal justice training and statistics division - Personnel - Purpose. ~~A criminal~~ Criminal justice training and the collection of statistics ~~division is created under the~~ must be conducted by the office of attorney general. ~~The division shall consist of a director and such other personnel as may be designated by the attorney general. The attorney general shall supervise the criminal justice training and statistics division.~~ ‡ The office of attorney general shall be the purpose of the criminal justice training and statistics division to certify and conduct the training of peace officers; ~~local correctional officers;~~ and sheriffs; ~~to conduct training for state's attorneys and defense attorneys;~~ and to gather, analyze, and disseminate information regarding the state's criminal justice system.

SECTION 2. AMENDMENT. Section 12-62-01.1 of the North Dakota Century Code is amended and reenacted as follows:

12-62-01.1. County and city officials to furnish crime statistics to director. ~~In an effort to~~ To assist in controlling crime in the state through the use of reliable statistics relating to crimes and criminal activity, the ~~director, with the approval of the~~ attorney general; ~~may call upon and~~ obtain from the clerks of district courts, municipal courts, ~~sheriffs, police departments,~~ and ~~state's attorneys~~ criminal justice agencies all information that the ~~director may deem~~ attorney general deems necessary ~~in ascertaining~~ to ascertain the ~~condition~~ status of crimes and criminal activity in North Dakota. It is the duty of the officials to furnish ~~any such~~ the information ~~so~~ requested by the ~~director~~ attorney general on whatever forms or in whatever manner the ~~director~~ attorney general may prescribe.

SECTION 3. AMENDMENT. Section 12-62-02 of the North Dakota Century Code is amended and reenacted as follows:

12-62-02. Powers and duties. ~~The powers and duties of the criminal justice training and statistics division shall be~~ To ensure adequate training for law enforcement and to ensure the comprehensive collection of crime statistics the attorney general shall:

1. ~~To determine~~ Determine the specialized training needs of peace officers and conduct such training.
2. ~~To conduct training for peace officers which will meet their specialized needs.~~
3. ~~To prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools.~~
4. ~~To certify curriculum, instructors, schools, and officers that have met the training certification criteria.~~
5. ~~To establish the curriculum for basic and advanced peace officer training.~~
6. ~~To prescribe minimum standards of sidearm training for peace officers prior to carrying a sidearm, and to certify officers who have met the established standards.~~
7. ~~To conduct and certify training for local correctional officers.~~
8. ~~To conduct training which meets the approved coursework requirements for continuing legal education credit for state's attorneys and their assistants, and for defense attorneys.~~
9. ~~To develop and maintain a manpower, training, and certification information system.~~
10. ~~To develop and maintain a jail information system.~~
11. ~~To analyze data available from the division's information system and other criminal justice related information systems and to compile appropriate periodic reports based on that data.~~
12. ~~To assist state and local criminal justice agencies in the development of record systems and information systems.~~
13. ~~To coordinate the utilization of data which is generated by state and local record information systems~~ Develop and maintain a staffing, training, and certification information system.
3. Analyze criminal justice data and compile appropriate periodic reports.
4. Coordinate the utilization of data generated by state and local record information systems.
14. 5. ~~To conduct~~ Conduct research projects designed to respond to criminal justice system needs and executive, judicial, or legislative branch requests.

- ~~15.~~ 6. ~~To accept~~ Accept and administer gifts, or grants, or contracts with persons or organizations, including the federal government, on such terms as may be beneficial to the state.

SECTION 4. AMENDMENT. Section 12-62-07 of the North Dakota Century Code is amended and reenacted as follows:

12-62-07. Sheriffs - Training. Every newly elected or appointed sheriff shall attend within the first year of employment a course of training on civil duties conducted by the ~~division~~ office of attorney general. The curriculum, location, and dates shall be determined by the ~~division~~ office of attorney general in cooperation with the sheriff's association. ~~Such~~ The course shall be open to all sheriffs and deputies.

SECTION 5. AMENDMENT. Section 12-62-10 of the North Dakota Century Code is amended and reenacted as follows:

12-62-10. Rulemaking power. The attorney general may adopt rules to carry out the powers and duties ~~assigned to the criminal justice training and statistics division~~ designated in this chapter. All rules adopted by the attorney general and appeals therefrom shall be in accordance with chapter 28-32.

SECTION 6. AMENDMENT. Section 12-63-01 of the North Dakota Century Code is amended and reenacted as follows:

12-63-01. Definitions. ~~In sections 12-63-04 through 12-63-14, unless the context or subject matter otherwise requires~~ As used in this chapter:

1. "Board" means the peace officer standards and training board.
2. ~~"Director" means the director of the division.~~
3. ~~"Division" means the training section of the bureau of criminal investigation.~~
4. "Peace officer" means a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the law.

SECTION 7. A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

Peace officer standards and training board - Membership - Duties. The peace officer standards and training board consists of nine members including the director of the law enforcement training center, six peace officers, one county government representative, and one city governmental representative. With the exception of the director of the law enforcement training center, all members must be appointed by the attorney general and serve staggered two-year terms. With the exception of the county government representative, the city government representative, and the director of the law enforcement training center, a member may not serve more than three consecutive terms. The attorney general shall also appoint the chairman of the board. The office of attorney general shall provide support staff to the board, including an employee to serve as the secretary of the board and as an ex officio nonvoting member of the board.

SECTION 8. AMENDMENT. Section 12-63-02 of the North Dakota Century Code is amended and reenacted as follows:

12-63-02. License required. An individual may not perform peace officer law enforcement duties in this state unless the individual is licensed ~~under sections 12-63-01 through 12-63-14~~ as required in this chapter.

SECTION 9. AMENDMENT. Section 12-63-03 of the North Dakota Century Code is amended and reenacted as follows:

12-63-03. Persons and practices not affected. ~~Sections 12-63-01 through 12-63-14 do~~ This chapter does not prevent or restrict the practice of peace officer duties or activities of:

1. Auxiliary personnel such as members of organized groups for purposes such as posse, search and rescue, and security at dances, if the group operates as adjunct to the police or sheriff's department, and does not have arrest powers or peace officer authority delegated to its members by the department.
2. A reserve officer such as an individual used by a municipal, county, or state law enforcement agency to provide services to that jurisdiction on a nonsalaried basis and who is granted full arrest authority.
3. A person who provides private investigative services in this state.
4. A person doing private security work or any private security agency.
5. A person performing peace officer duties in an official capacity as a federal officer.

SECTION 10. AMENDMENT. Section 12-63-04 of the North Dakota Century Code is amended and reenacted as follows:

12-63-04. Board - Powers - Duties - Authority. The board shall administer, coordinate, and enforce ~~sections 12-63-01 through 12-63-14~~ the provisions of this chapter, evaluate the qualifications of applicants, and approve the examinations for licensing under ~~sections 12-63-01 through 12-63-14~~ this chapter.

1. The board shall:
 - a. Prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools;
 - b. Certify curriculum, instructors, schools, and officers that have met the training certification criteria;
 - c. Establish the curriculum for basic and advanced peace officer training; and
 - d. Prescribe minimum standards of sidearm training and certification for peace officers before they may carry a sidearm.
2. The board shall keep records and minutes necessary to carry out its functions. The board may:

1. a. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating ~~sections 12-63-01 through 12-63-14~~ the provisions of this chapter or rules adopted by the board.
2. b. Examine, under oath, any applicant for licensing.
3. c. Examine, under oath, any licensed peace officer during a hearing to suspend, revoke, or to not renew a license of a peace officer.
4. d. Adopt rules ~~that relate~~ relating to the professional conduct or carry out the policy of sections 12-63-01 through 12-63-14 of peace officers and to implement the requirements of this chapter, including rules relating to professional licensure, continuing education, and ~~to establishment of~~ ethical standards of practice, for persons holding a license to practice peace officer duties.

SECTION 11. AMENDMENT. Section 12-63-05 of the North Dakota Century Code is amended and reenacted as follows:

12-63-05. Fees. The board shall prescribe by rule the fee for application for examination, for an initial license, for renewal of a license, and for late renewal of a license. The board shall administer fees received under ~~sections 12-63-01 through 12-63-14~~ this chapter in accordance with section 54-44-12.

SECTION 12. AMENDMENT. Section 12-63-09 of the North Dakota Century Code is amended and reenacted as follows:

12-63-09. Limited license. Pending successful completion of the written examination required ~~by sections 12-63-01 through 12-63-14 in this chapter,~~ the board may grant a limited license to a person who has completed the education, medical, and psychological examination requirements and has been qualified to carry a sidearm. The limited license allows the person to practice peace officer duties in accordance with rules of the board. Except as otherwise provided, the limited license is valid for no longer than the earlier of the expiration of the next available training session, until the person is issued a license under section 12-63-10, or until the limited license is suspended or revoked by the board. After being employed but before taking the written examination, the person shall attend the first available basic training program recognized by the board. The limited license may be renewed one time if the person has failed the examination. On terms and conditions prescribed by the board, the limited license is limited to the jurisdiction in which the person is employed.

SECTION 13. AMENDMENT. Section 12-63-10 of the North Dakota Century Code is amended and reenacted as follows:

12-63-10. Issuance of license. The board shall issue a license to any person who meets the requirements of ~~sections 12-63-01 through 12-63-14~~ this chapter and who has paid the prescribed license fee.

SECTION 14. AMENDMENT. Section 12-63-12 of the North Dakota Century Code is amended and reenacted as follows:

12-63-12. Adverse license action - Appeal.

1. The board may deny a license, refuse to renew a license, suspend a license, or revoke a license, or may impose probationary conditions if the person:
 - a. Has been convicted or pled guilty or nolo contendere before a court of competent jurisdiction in any state, or before any court, of an offense determined by the board to have a direct bearing upon a person's ability to serve as a peace officer, or the board determines, following a conviction or adjudication, that the person is not rehabilitated under section 12.1-33-02.1.
 - b. Has used unjustified deadly force in the performance of the duties as a peace officer as described in section 12.1-05-07.
 - c. Has made a false material statement under oath to the board.
 - d. Has made a false material statement to the board while obtaining or renewing a license or permit.
 - e. Has violated ~~sections 12-63-01 through 12-63-14~~ this chapter.
2. Denial, refusal to renew, suspension, revocation, or imposition of probationary condition on a license may be ordered by the board after a hearing in a manner provided by rules adopted by the board. An application for reinstatement may be made to the board one year from the date of the refusal to renew or the revocation of the license. The board may accept or reject an application for reinstatement and may hold a hearing to consider the reinstatement. In the case of a denial of an application, the applicant may not reapply for a period of one year from the date of the order of denial.
3. An appeal from the final decision of the board to refuse to issue, to not renew, to suspend, or to revoke a license may be made to the district court. Venue is the county in which the aggrieved person resides. The appeal must be made within ninety days from the service of the decision on the person.

SECTION 15. A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

Temporary suspension - Appeal.

1. The board may order a temporary suspension of a peace officer's license ex parte if the board finds, based on verified evidence, probable cause to believe that:
 - a. A peace officer has violated this chapter or a rule of the board;
 - b. Continued performance of peace officer law enforcement duties would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending; and

- c. Immediate suspension of the peace officer's license is required to reasonably protect the public from that risk of harm.

For purposes of this section, evidence is verified if sworn to before an officer authorized to administer oaths or equivalent affirmations.

2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.
3. The board shall set the date of a full hearing on the cause and grounds for discipline regarding the license at a time not later than sixty days after the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order, the board shall serve the peace officer with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.
4. The peace officer may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether the board acted reasonably or arbitrarily. The court shall give priority to the appeal for prompt disposition. Unless otherwise ordered by the district court, an appeal by the peace officer of the ex parte temporary suspension order does not stay the effectiveness or validity of the ex parte temporary license suspension.

SECTION 16. A new section to chapter 12-63 of the North Dakota Century Code is created and enacted as follows:

Costs of prosecution - Disciplinary proceedings. In a disciplinary proceeding in which disciplinary action is imposed against a peace officer, the board may direct the peace officer to pay the board a sum not to exceed the reasonable and actual costs of the case, including reasonable attorney's fees incurred by the board or its authorized representatives in the investigation, prosecution, resolution, and hearings, whether held before the board, a hearing officer, or administrative law judge. When applicable, the peace officer's license may be suspended until the costs are paid to the board. A peace officer may challenge the reasonableness of any cost in a hearing under chapter 28-32. The administrative law judge may approve, deny, or modify any cost, and determination of the judge is final. If requested, the hearing must occur before the peace officer's license may be suspended for nonpayment.

SECTION 17. REPEAL. Sections 12-62-03, 12-62-05, 12-62-06, and 12-62-09 of the North Dakota Century Code are repealed.

SECTION 18. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 11, 2003
Filed April 14, 2003

CHAPTER 102**SENATE BILL NO. 2147**

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

SUPERVISION OF ADULT OFFENDERS

AN ACT to create and enact six new sections to chapter 12-65 of the North Dakota Century Code, relating to the supervision of adult offenders; to amend and reenact subsection 3 of section 12-47-36, subsection 4 of article 2 and subsection 2 of article 3 of section 12-65-01, and subsection 1 of section 54-57-03 of the North Dakota Century Code, relating to records of persons in the custody of or under the supervision and management of the department of corrections and rehabilitation, hearings before administrative law judges, and supervision of adult offenders; to repeal chapters 12-56 and 12-56.1 of the North Dakota Century Code and section 2 of chapter 141 of the 2001 Session Laws, relating to out-of-state parolee supervision, hearings for interstate parolees and probationers, and elimination of the expiration date of laws relating to the interstate compact for adult offender supervision; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12-47-36 of the North Dakota Century Code is amended and reenacted as follows:

3. Notwithstanding any other provisions of law relating to privilege or confidentiality, except for the confidentiality requirements of federal drug and alcohol treatment and rehabilitation laws, the following persons, organizations, or agencies without prior application to the court may inspect case history, medical, psychological, or treatment records:
 - a. The governor;
 - b. The pardon advisory board, if the governor has appointed a pardon advisory board;
 - c. The parole board;
 - d. Any division, department, official, or employee of the department of corrections and rehabilitation;
 - e. Another state receiving a parolee or probationer under the provisions of chapter ~~12-56~~ or ~~12-56.1~~ 12-65;
 - f. A federal, state, regional, or county correctional facility receiving physical custody of a person under the legal custody of the department of corrections and rehabilitation;
 - g. The employees in the office of the attorney general and investigators, consultants, or experts retained by the state;

- h. The risk management division of the office of management and budget for the purpose of investigating and defending actions or claims under chapter 32-12.2;
- i. The district court of the county where the judgment of conviction was entered;
- j. A state or federal court where a person in the custody or under the supervision and management of the adult services division of the department of corrections and rehabilitation has commenced litigation and the records are relevant to the litigation;
- k. A criminal justice agency as defined in section 44-04-18.7; or
- l. The United States social security administration and veterans administration.

SECTION 2. AMENDMENT. Subsection 4 of article 2 of section 12-65-01 of the North Dakota Century Code is amended and reenacted as follows:

- 4. "Compact administrator" means the individual in each compacting state appointed under the terms of this compact, or the individual's designee, responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission, and policies adopted by the state council under this compact.

SECTION 3. AMENDMENT. Subsection 2 of article 3 of section 12-65-01 of the North Dakota Century Code is amended and reenacted as follows:

- 2. The interstate commission consists of commissioners selected and appointed by each state. The governor shall appoint a commissioner and a deputy commissioner. In addition to the commissioners who are the voting representatives of each state, the interstate commission includes individuals who are not commissioners but who are members of interested organizations. The noncommissioner members include a member of the national organizations of governors, legislators, state chief justices, attorneys general, and crime victims. All noncommissioner members of the interstate commission are nonvoting members. The interstate commission may provide in its bylaws for additional nonvoting members as it deems necessary.

SECTION 4. Six new sections to chapter 12-65 of the North Dakota Century Code are created and enacted as follows:

Custody and detention of offender for violation of terms and conditions of compact supervision - Hearing and waiver - Report to sending state. Whenever it is alleged that an offender has violated any terms and conditions of supervision under the compact for the supervision of adult offenders, the compact administrator may issue a warrant to take the offender into custody and detain the offender and request that the sending state retake the offender. If there is probable cause to believe an offender has violated any of the terms or conditions of supervision under the compact for the supervision of adult offenders, a parole and probation officer or any peace officer directed by a parole and probation officer may take the offender into custody and detain the offender in a correctional facility pending application for a warrant of arrest and authority to detain. The offender may

not be released on bail pending the probable cause hearing under this chapter. The offender is entitled to a hearing to be held in accordance with this chapter within a reasonable time after being taken into custody to determine whether there is probable cause to find that the offender violated any of the terms and conditions of parole or probation while under compact supervision. The offender may waive the hearing and admit there is probable cause to find that the offender violated any of the terms and conditions of parole or probation while under compact supervision. As soon as practical after the hearing or waiver of the hearing, the compact administrator shall furnish a copy of the hearing record and make a report to the sending state with findings of fact regarding the violations of the terms and conditions of parole or probation while under compact supervision and shall make recommendations regarding the disposition of the offender. If it appears to the compact administrator that the sending state will retake the offender, the compact administrator may detain the offender for a reasonable period after the hearing or waiver in order for the sending state to arrange for retaking the offender.

Waiver of extradition. Authorized officers of a sending state may enter this state and apprehend and retake any offender from the sending state who is present in this state pursuant to the compact for the supervision of adult offenders. The sending state shall establish the authority of the officers and the identity of the offender before the officers may retake the offender back to the sending state. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived. The decision of the sending state to retake an offender is conclusive upon and not reviewable by this state. If the offender is alleged to have committed a criminal offense within this state, or if there is any criminal charge pending against an offender in this state, and unless permission has been obtained from the state's attorney in the county in which the criminal offense is alleged to have occurred, the sending state may not retake the offender from this state until the offender has been discharged from prosecution or released from imprisonment for the criminal offense.

Who may hold a hearing. A hearing pursuant to this chapter must be before a hearing officer designated by the compact administrator. The hearing may not be conducted by a person directly involved in the supervision of the offender or by the person bringing the allegation of a probation or parole violation.

Conduct of hearing. The offender is entitled to:

1. Notice in writing of the nature and content of the allegations against the offender and that the purpose of the hearing is to determine whether there is probable cause to believe that the offender has violated any terms and conditions of compact supervision that may result in the sending state retaking the offender and may result in revocation of parole or probation in the sending state.
2. Opportunity to be heard in person and present witnesses and evidence.
3. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that confrontation may present a risk of harm to a witness.
4. Written findings of fact and an explanation of the decision.

Force and effect of hearings in other states. In a case of alleged parole or probation violation by an offender being supervised in another state pursuant to the interstate compact for the supervision of adult offenders, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on

the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this chapter, the record has the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state, and any recommendations contained in or accompanying the record must be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

Violation of compact - Penalty. An offender who is on parole or probation in another state, who is present in this state without the permission of the compact administrator, and who does not leave this state within seven days after being notified in writing by a law enforcement officer that the offender may not remain in this state without the permission of the compact administrator is guilty of a class C felony. Within twenty-four hours after a law enforcement officer has notified an offender that the offender may not remain within the state without the permission of the compact administrator, the law enforcement officer shall report the notification to the designated officer. An offender who is on parole or probation in another state may not remain in this state without the permission of the compact administrator. In a prosecution for an offense under this section, an offender's good-faith belief that the offender received permission to be present in this state is an affirmative defense if the offender acted in reasonable reliance upon the written statements of an authorized officer of this state or the state in which the offender is on parole or probation. This defense is not available to a person who remains present in this state after being notified in writing by the compact administrator that the offender does not have permission to be present.

SECTION 5. AMENDMENT. Subsection 1 of section 54-57-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all adjudicative proceedings of administrative agencies under chapter 28-32, except those of the public service commission, the industrial commission, the insurance commissioner, the workers compensation bureau, the state engineer, the department of transportation, job service North Dakota, and the labor commissioner, must be conducted by the office of administrative hearings in accordance with the adjudicative proceedings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with ~~chapters 12-56.1 and chapter 12-59~~, regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.

SECTION 6. REPEAL. Chapters 12-56 and 12-56.1 of the North Dakota Century Code and section 2 of chapter 141 of the 2001 Session Laws are repealed.

CHAPTER 103

HOUSE BILL NO. 1254

(Representatives DeKrey, Delmore, Grande)
(Senators Lyson, Nelson, Traynor)

INTERSTATE COMPACT FOR JUVENILES

AN ACT to adopt the interstate compact for juveniles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Compact for juveniles. This interstate compact for juveniles is entered with all jurisdictions legally joining the compact in the form substantially as follows:

Article 1. Purpose

The compacting states to this interstate compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that the United States Congress, by enacting the Crime Control Act [Pub. L. 89-554; 80 Stat. 608; 4 U.S.C. 112] has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states to:

1. Ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state;
2. Ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected;
3. Return juveniles who have run away, absconded, or escaped from supervision or control or have been accused of an offense to the state requesting their return;
4. Make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services;
5. Provide for the effective tracking and supervision of juveniles;
6. Equitably allocate the costs, benefits, and obligations of the compacting states;

7. Establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders;
8. Ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines;
9. Establish procedures to resolve pending charges against juvenile offenders before transfer or release to the community under the terms of this compact;
10. Establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators;
11. Monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance;
12. Coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and
13. Coordinate the implementation and operation of the compact with the interstate compact for the placement of children, the interstate compact for adult offender supervision, and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the interstate commission are the formation of public policies and therefore are public business, and the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact must be reasonably and liberally construed to accomplish the purposes and policies of the compact.

Article 2. Definitions

As used in this compact, unless the context requires otherwise:

1. "Bylaws" means those bylaws established by the commission for its governance, or for directing or controlling its actions or conduct.
2. "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact, responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the commission, and policies adopted by the state council under this compact.
3. "Compacting state" means any state that has enacted the enabling legislation for this compact.

4. "Commission" means the interstate commission for juveniles created by article 3 of this compact.
5. "Commissioner" means the voting representative of each compacting state appointed pursuant to article 3 of this compact.
6. "Court" means any court having jurisdiction over delinquent, neglected, or dependent children.
7. "Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator.
8. "Juvenile" means any individual defined as a juvenile in any member state or by the rules of the interstate commission, including:
 - a. An accused delinquent, who is an individual charged with an offense that, if committed by an adult, would be a criminal offense;
 - b. An adjudicated delinquent, who is an individual found to have committed an offense that, if committed by an adult, would be a criminal offense;
 - c. An accused status offender, who is an individual charged with an offense that would not be a criminal offense if committed by an adult;
 - d. An adjudicated status offender, who is an individual found to have committed an offense that would not be a criminal offense if committed by an adult; and
 - e. A nonoffender, who is an individual in need of supervision who has not been accused or adjudicated a status offender or delinquent.
9. "Noncompacting state" means any state that has not enacted the enabling legislation for this compact.
10. "Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.
11. "State" means a state of the United States, the District of Columbia, or its designee, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands.

Article 3. Interstate Commission for Juveniles

1. The compacting states create the interstate commission for juveniles. The commission is a body corporate and joint agency of the compacting states. The commission has all the responsibilities, powers, and duties set forth in this compact, and any additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.
2. The commission consists of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the state

council for interstate juvenile supervision. The commissioner is the compact administrator, deputy compact administrator, or designee from that state who serves on the commission in that capacity under or pursuant to the applicable law of the compacting state.

3. In addition to the commissioners who are the voting representatives of each state, the commission must include individuals who are not commissioners, but who are members of interested organizations. The noncommissioner members include a member of the national organizations of governors, legislators, state chief justices, attorneys general, interstate compact for adult offender supervision, interstate compact for the placement of children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the commission are nonvoting members. The commission may provide in its bylaws for other additional nonvoting members, including members of other national organizations, in those numbers as determined by the commission.
4. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states constitutes a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the commission.
5. The commission shall meet at least once each calendar year. The chairman may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice must be given of all meetings and meetings must be open to the public.
6. The commission shall establish an executive committee that includes commission officers, members, and others as determined by the bylaws. The executive committee shall act on behalf of the commission during periods when the commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee oversees the day-to-day activities of the administration of the compact managed by an executive director and commission staff; administers enforcement and compliance with the provisions of the compact, its bylaws and rules, and performs any other duties as directed by the commission or set forth in the bylaws.
7. Each member of the commission is entitled to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person and may not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specified meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.
8. The commission's bylaws must establish conditions and procedures under which the commission makes its information and official records available to the public for inspection or copying. The commission may exempt from disclosure any information or official records to the extent

the information or records would adversely affect personal privacy rights or proprietary interests.

9. Public notice must be given of all meetings and all meetings are open to the public, except as set forth in the rules or as otherwise provided in the compact. The commission and any of its committees may close a meeting to the public when it determines by two-thirds vote that an open meeting would be likely to:
 - a. Relate solely to the commission's internal personnel practices and procedures;
 - b. Disclose matters specifically exempted from disclosure by statute;
 - c. Disclose trade secrets or commercial or financial information that is privileged or confidential;
 - d. Involve accusing any person of a crime or formally censuring any person;
 - e. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - f. Disclose investigative records compiled for law enforcement purposes;
 - g. Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the commission with respect to a regulated person for the purpose of regulation or supervision of that person;
 - h. Disclose information, the premature disclosure of which would significantly endanger the stability of a regulated person; or
 - i. Specifically relate to the commission's issuance of a subpoena or its participation in a legal proceeding.
10. For every meeting closed pursuant to this provision, the commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The commission shall keep minutes that fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote. All documents considered in connection with any action must be identified in the minutes.
11. The commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules which shall specify the data to be collected, the means of collection and data exchange, and reporting requirements. The methods of data collection, exchange, and reporting, insofar as is reasonably possible, must conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

Article 4. Powers and Duties of the Commission

The commission has the following powers and duties:

1. To provide for dispute resolution among compacting states.
2. To adopt rules to effect the purposes and obligations as enumerated in this compact, which have the force and effect of law and are binding in the compacting states to the extent and in the manner provided in this compact.
3. To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules adopted by the commission.
4. To enforce compliance with the compact provisions, the rules adopted by the commission, and the bylaws, using all necessary and proper means, including the use of judicial process.
5. To establish and maintain offices located within one or more of the compacting states.
6. To purchase and maintain insurance and bonds.
7. To borrow, accept, hire, or contract for services of personnel.
8. To establish and appoint committees and hire staff it determines necessary for the carrying out of its functions, including an executive committee as required by article 3, which has the power to act on behalf of the commission in carrying out its powers and duties under this compact.
9. To elect or appoint officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications, and to establish the commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.
10. To accept, use, and dispose of donations and grants of money, equipment, supplies, materials, and services.
11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property.
12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property.
13. To establish a budget and make expenditures and levy dues as provided in article 8 of this compact.
14. To sue and be sued.
15. To adopt a seal and bylaws governing the management and operation of the commission.

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.
17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the commission during the preceding year. Reports must include any recommendations that may have been adopted by the commission.
18. To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in that activity.
19. To establish uniform standards of the reporting, collecting, and exchanging of data.
20. To maintain its corporate books and records in accordance with the bylaws.

Article 5. Organization and Operation of the Commission

1. The commission, by a majority of the members present and voting, within twelve months after the first commission meeting, shall adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including:
 - a. Establishing the fiscal year of the commission;
 - b. Establishing an executive committee and any other committee as may be necessary;
 - c. Providing for the establishment of committees governing any general or specific delegation of any authority or function of the interstate commission;
 - d. Providing reasonable procedures for calling and conducting meetings of the commission and ensuring reasonable notice of each meeting;
 - e. Establishing the titles and responsibilities of the officers of the commission;
 - f. Providing a mechanism for concluding the operations of the commission and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all of its debts and obligations;
 - g. Providing startup rules for initial administration of the compact; and
 - h. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.
2. The commission, by a majority of the members, shall elect annually from among its members a chairman and a vice chairman, each of whom has the authority and duties as may be specified in the bylaws. The chairman or, in the chairman's absence or disability, the vice chairman shall preside at all meetings of the commission. The officers so elected shall serve without compensation or remuneration from the commission,

provided that, subject to the availability of budgeted funds, the officers are reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

3. The commission, through its executive committee, shall appoint or retain an executive director for a period, upon the terms and conditions, and for the compensation as the commission determines appropriate. The executive director shall serve as secretary to the commission, but may not be a member, and shall hire and supervise any other staff as may be authorized by the commission.
4.
 - a. The commission's executive director and employees are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to any actual or alleged act, error, or omission that occurred, or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided, that the individual is not protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct.
 - b. The liability of any commissioner, or the employee or agent of a commissioner, acting within the scope of that individual's employment or duties for acts, errors, or omissions occurring within that individual's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. This subdivision does not protect any individual from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that individual.
 - c. The commission shall defend the executive director or the employees or representatives of the commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend the commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of that individual.
 - d. The commission shall indemnify and hold the commissioner of a compacting state, or the commissioner's representatives or employees, or the commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against the individuals arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the individuals had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that

the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct on the part of the individuals.

Article 6. Rulemaking Functions of the Commission

1. The commission shall adopt and publish rules to effectively and efficiently achieve the purposes of the compact.
2. Rulemaking must occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant to this article. The rulemaking must substantially conform to the principles of the Model State Administrative Procedures Act, 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000), or any other administrative procedures act, as the interstate commission deems appropriate consistent with due process requirements under the Constitution of the United States. All rules and amendments become binding as of the date specified, as published with the final version of the rule as approved by the commission.
3. When adopting a rule, the commission shall:
 - a. Publish the proposed rule's entire text stating the reason for that proposed rule;
 - b. Allow and invite any person to submit written data, facts, opinions, and arguments which must be added to the record, and be made publicly available;
 - c. Provide an opportunity for an informal hearing if petitioned by ten or more persons; and
 - d. Adopt a final rule and its effective date, if appropriate, based on comment from interested parties or state or local officials.
4. Not later than sixty days after a rule is adopted, any interested person may file a petition in the United States district court for the District of Columbia or in the federal district court where the commission's principal office is located for judicial review of the rule. If the court finds that the commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedures Act.
5. If a majority of the legislatures of the compacting states rejects a rule, those states, by enactment of a statute or resolution in the same manner used to adopt the compact, may cause that the rule has no further force and effect in any compacting state.
6. The existing rules governing the operation of the interstate compact on juveniles superseded by this act are void twelve months after the first meeting of the commission.
7. Upon determination by the commission that a state of emergency exists, the commission may adopt an emergency rule that becomes effective

immediately upon adoption, provided that the usual rulemaking procedures provided in this article are retroactively applied to the rule as soon as reasonably possible, but no later than ninety days after the effective date of the emergency rule.

Article 7. Oversight, Enforcement, and Dispute Resolution by the Commission

1. The commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor those activities being administered in noncompacting states which may significantly affect compacting states.
2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. This compact and the rules adopted under this compact must be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts must take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the interstate commission, the commission is entitled to receive all service of process in the proceeding, and has standing to intervene in the proceeding for all purposes.
3. The compacting states shall report to the commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.
4. The commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and which may arise among compacting states and between compacting and noncompacting states. The commission shall adopt a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.
5. The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any or all means set forth in article 11 of this compact.

Article 8. Finance

1. The commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.
2. The commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the commission and the commission's staff, which must be in a total amount sufficient to cover the commission's annual budget as approved each year. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the commission, taking into consideration the population of each compacting state and

the volume of interstate movement of juveniles in each compacting state and shall adopt a rule binding upon all compacting states which governs the assessment.

3. The commission may not incur any obligations of any kind before securing the funds adequate to meet the obligations, nor may the commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.
4. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant and the report of the audit must be included in and become part of the annual report of the commission.

Article 9. Compact Administrator and State Council

1. The director of the department of corrections and rehabilitation, or the director's designee, shall serve as the compact administrator for this state's commissioner to the commission.
2. The North Dakota state council for interstate juvenile supervision is established, consisting of seven members. The director of the department of corrections and rehabilitation, or the director's designee, is a member of the state council and serves as chairman. Of the remaining members of the state council:
 - a. The governor shall appoint three members, one of whom must represent a crime victim's organization; and
 - b. The chief justice of the supreme court shall appoint one member and the chairman of the legislative council shall appoint one member from the house of representatives and one member from the senate.
3. The term of office of a member is four years.
4. The state council shall meet at least twice a year.
5. The state council may advise the compact administrator on participation in the commission activities and administration of the compact.
6. Members of the state council are entitled to expenses as provided in sections 44-08-04 and 54-06-09. Legislative assembly members also are entitled to compensation at the rate provided in section 54-35-10.

Article 10. Compacting States, Effective Date, and Amendment

1. Any state is eligible to become a compacting state.
2. The compact becomes effective and binding upon legislative enactment of the compact into law by no less than thirty-five states. The initial effective date is the later of July 1, 2004, or upon enactment into law by

the thirty-fifth jurisdiction. Thereafter, the compact becomes effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of nonmember states or their designees must be invited to participate in the activities of the commission on a nonvoting basis before the adoption of the compact by all states and territories of the United States.

3. The commission may propose amendments to the compact for enactment by the compacting states. An amendment does not become effective and binding upon the commission and the compacting states until it is enacted into law by unanimous consent of the compacting states.

Article 11. Withdrawal, Default, Termination, and Judicial Enforcement

1. Once effective, the compact continues in force and remains binding upon every compacting state, but a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law. The effective date of withdrawal is the effective date of the repeal. The withdrawing state shall notify the chairman of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of receipt of the notice. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations the performance of which extend beyond the effective date of withdrawal. Reinstatement following withdrawal of any compacting state occurs upon the withdrawing state reenacting the compact or upon a later date as determined by the interstate commission.
2. If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact or the bylaws or rules of the commission, the commission may impose any or all of the following penalties:
 - a. Remedial training and technical assistance as directed by the commission;
 - b. Alternative dispute resolution;
 - c. Fines, fees, and costs in those amounts as are determined to be reasonable as fixed by the commission; and
 - d. Suspension or termination of membership in the compact, which may be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the commission has determined that the offending state is in default.
 - (1) Immediate notice of suspension must be given by the commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include failure of a compacting state

to perform the obligations or responsibilities imposed upon the state by this compact, the bylaws, or rules and any other grounds designated in commission bylaws and rules. The commission shall notify the defaulting state in writing of the penalty imposed by the commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state must be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact must be terminated from the effective date of termination.

- (2) Within sixty days of the effective date of termination of a defaulting state, the commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council of the termination. The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination. The commission does not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the commission pursuant to the rules.
3. The commission, by majority vote of the members, may initiate legal action in the United States district court for the District of Columbia or, at the discretion of the commission, in the federal district where the commission has its offices, to enforce compliance with the compact, its duly promulgated rules, and bylaws against any compacting state in default. If judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation, including reasonable attorney fees.
4. The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state. Upon the dissolution of this compact, the compact becomes void and the business and affairs of the commission must be concluded and any surplus funds must be distributed in accordance with the bylaws.

Article 12. Binding Effect of Compact and Other Laws

1. This compact does not prevent the enforcement of any other law of a compacting state which is consistent with this compact. All compacting states' laws other than the Constitution of North Dakota and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.
2. All lawful actions of the commission, including all rules and bylaws adopted by the commission, are binding upon the compacting states.

3. All agreements between the commission and the compacting states are binding in accordance with their terms.
4. Upon the request of a party to a conflict over meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation.
5. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by the provision upon the commission are ineffective and the obligations, duties, powers, or jurisdiction remain in the compacting state and must be exercised by the agency to which the obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Approved March 13, 2003

Filed March 13, 2003

CRIMINAL CODE

CHAPTER 104

HOUSE BILL NO. 1251

(Representatives Delmore, Hawken, Kretschmar, Onstad)
(Senators Traynor, Trenbeath)

COMPUTER CRIMES AND CIVIL DAMAGES

AN ACT to amend and reenact section 12.1-06.1-08 of the North Dakota Century Code, relating to computer crimes; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-06.1-08 of the North Dakota Century Code is amended and reenacted as follows:

12.1-06.1-08. Computer fraud - Computer crime - Classification - Penalty.

1. A person commits computer fraud by gaining or attempting to gain access to, altering, damaging, modifying, copying, disclosing, taking possession of, or destroying any computer, computer system, computer network, or any part of ~~such~~ the computer, system, or network, without authorization, and with the intent to devise or execute any scheme or artifice to defraud, deceive, prevent the authorized use of, or control property or services by means of false or fraudulent pretenses, representations, or promises. A person who commits computer fraud is guilty of a class C felony.
2. A person commits computer crime by intentionally and either in excess of authorization given or without authorization gaining or attempting to gain access to, altering, damaging, modifying, copying, disclosing, taking possession of, introducing a computer contaminant into, destroying, or preventing the authorized use of any computer, computer system, or computer network, or any computer software, program, or data contained in ~~such~~ the computer, computer system, or computer network. A person who commits computer crime is guilty of a class A misdemeanor.
3. In addition to any other remedy available, the owner or lessee of a computer, computer system, computer network, or any part of the computer, computer system, or computer network may bring a civil action for damages, restitution, and attorney's fees for damages incurred as a result of the violation of this section.

Approved April 4, 2003
Filed April 7, 2003

CHAPTER 105

SENATE BILL NO. 2329 (Senators O'Connell, Bercier, Nelson)

DOMESTIC VIOLENCE OFFENDER MANDATED TREATMENT

AN ACT to create and enact a new section to chapter 12.1-17 of the North Dakota Century Code, relating to mandated treatment for domestic violence offenders; and to amend and reenact sections 12.1-17-01 and 14-07.1-06 of the North Dakota Century Code, relating to mandated treatment of domestic violence offenders and to the violation of a protection order.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
 - a. Willfully causes bodily injury to another human being; or
 - b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
 - a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact, a person engaged in a judicial proceeding, or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
 - b. A class B misdemeanor for the first offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and a class A misdemeanor for a second or subsequent offense when the victim is an actor's family or household member as defined in subsection 4 of section 14-07.1-01 and the actor has a prior conviction for simple assault involving the commission of domestic violence as defined in subsection 2 of section 14-07.1-01. For purposes of this subdivision, a prior conviction includes a conviction of simple assault in which a finding of domestic violence was made under a law or ordinance of another state which is equivalent to this subdivision.
 - c. A class B misdemeanor except as provided in subdivision a or b.

3. The sentence for an offense against an actor's family or household member as defined in subsection 4 of section 14-07.1-01 must include an order to complete a domestic violence offender treatment program, unless the court makes written findings for the record explaining why such a sentence would be inappropriate.

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

Mandated treatment of domestic violence offenders. The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household member, as defined in subsection 4 of section 14-07.1-01, must include an order to complete a domestic violence offender treatment program unless the court makes written findings for the record explaining why such an order would be inappropriate.

⁵⁴ **SECTION 3. AMENDMENT.** Section 14-07.1-06 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-06. Penalty for violation of a protection order. Whenever a protection order is granted under section 14-07.1-02 or 14-07.1-03 and the respondent or ~~person~~ individual to be restrained has been served a copy of the order, ~~a~~ the first violation of the ~~any~~ any order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of ~~a~~ any protection order is a class C felony. Violation of a foreign protection order entitled to full faith and credit recognition under section 14-07.1-02.2 is a class A misdemeanor. A second or subsequent violation of such an order is a class C felony. For purposes of this section, "first violation" means the first time any order is violated and a second or subsequent violation of any protection order includes two or more violations of protection orders.

Approved March 26, 2003
Filed March 26, 2003

⁵⁴ Section 14-07.1-06 was also amended by section 1 of House Bill No. 1072, chapter 123.

CHAPTER 106**SENATE BILL NO. 2212**

(Senators Dever, Brown, Mathern)
(Representatives Clark, Onstad, Pietsch)

CHILD ABUSE AND INDECENT EXPOSURE

AN ACT to amend and reenact section 12.1-20-08, subsection 1 of section 12.1-20-12.1, subsection 8 of section 27-20-02, subsection 2 of section 50-25.1-02, and section 50-25.1-03.1 of the North Dakota Century Code, relating to the crimes of fornication and indecent exposure, definition of deprived child, and child abuse and neglect reporting requirements; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-20-08 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-08. Fornication. ~~A person~~ An individual is guilty of a class A misdemeanor if ~~he~~ the individual engages in a sexual act in a public place. A minor engaging in a sexual act is guilty of a class B misdemeanor, unless that sexual act was committed against the minor in violation of sections 12.1-20-01 through 12.1-20-07.

SECTION 2. AMENDMENT. Subsection 1 of section 12.1-20-12.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that person:
 - a. Masturbates in a public place or in the presence of a minor; or
 - b. Exposes one's penis, vulva, or anus in a public place or to a minor in a public or private place.

SECTION 3. AMENDMENT. Subsection 8 of section 27-20-02 of the North Dakota Century Code is amended and reenacted as follows:

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; ~~or~~
- 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 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.

⁵⁵ **SECTION 4. AMENDMENT.** Subsection 2 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

- 2. "Abused child" means an individual under the age of eighteen years who is suffering from serious physical harm or traumatic abuse caused by other than accidental means by a person responsible for the child's welfare, or who is suffering from or was subjected to any act ~~involving that individual~~ in violation of sections 12.1-20-01 through ~~42.1-20-08~~ 12.1-20-07.

SECTION 5. 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 and ~~x-rays~~ - 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 and, if indicated by medical consultation, cause to be performed a ~~radiological examination~~ 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 ~~x-rays taken~~ 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.

⁵⁵ Section 50-25.1-02 was also amended by section 1 of Senate Bill No. 2271, chapter 431.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 107**HOUSE BILL NO. 1215**

(Representatives Dosch, Clark, Delmore, Kasper, Meier)
(Senator Dever)

FIRE ALARM TAMPERING PROHIBITED

AN ACT to create and enact a new section to chapter 12.1-21 of the North Dakota Century Code, relating to tampering with, disabling, or falsely sounding a fire alarm and tampering with or disabling fire suppression equipment; 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 12.1-21 of the North Dakota Century Code is created and enacted as follows:

Tampering with, disabling, or falsely sounding a fire alarm - Tampering with or disabling fire suppression equipment.

1. A person may not tamper with, disable, or falsely sound an alarm signifying a fire in a hotel, motel, roominghouse, lodginghouse, or other place of public abode or in any other public place so as to endanger person or property. A person does not violate this subsection if that person sounds an alarm and has a reasonable belief there is a fire endangering person or property.
2. A person may not tamper with or disable fire suppression equipment in a hotel, motel, roominghouse, lodginghouse, or other place of abode or in any other public place so as to endanger person or property.
3. A violation of this section is a class B misdemeanor.

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

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 108

SENATE BILL NO. 2269

(Senators Dever, Espegard)
(Representatives Delmore, Dosch, Wrangham)

THEFT DETECTION SHIELDING DEVICE OFFENSES

AN ACT to create and enact two new sections to chapter 12.1-23 of the North Dakota Century Code, relating to the unlawful manufacture, distribution, and use of theft detection shielding devices or deactivators; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 12.1-23 of the North Dakota Century Code are created and enacted as follows:

Distribution and use of theft detection shielding devices.

1. A person is guilty of unlawful distribution of a theft detection shielding device if the person knowingly manufactures, sells, offers for sale, or distributes any laminated or coated bag or device peculiar to shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor.
2. A person is guilty of unlawful possession of a theft detection shielding device if the person knowingly possesses any laminated or coated bag or device peculiar to and designed for shielding and intended to shield merchandise from detection by an electronic or magnetic theft alarm sensor, with the intent to commit theft.
3. A person is guilty of unlawful possession of a theft detection device deactivator or remover if the person knowingly possesses any tool or device designed to allow the deactivation or removal of any theft detection device from any merchandise without the permission of the merchant or person owning or holding the merchandise.
4. A person is guilty of unlawful deactivation or removal of a theft detection device if the person intentionally deactivates or removes the device from a product before purchase.
5. A person is guilty of unlawful distribution of a theft detection device deactivator or remover if the person knowingly manufactures, sells, offers for sale, or distributes any tool or device designed to allow the deactivation or removal of a theft detection device from merchandise without the permission of the merchant or person owning or holding the merchandise.
6. An offense under subsections 1 and 5 is a class C felony. An offense under subsections 2, 3, and 4 is a class A misdemeanor.

Detention of persons suspected of unlawful use or removal of theft detection devices - Reasonable cause.

1. The activation of an antishoplifting or inventory control device as a result of a person exiting the establishment or a protected area within the establishment constitutes reasonable cause for the detention of the person exiting by the owner or operator of the establishment or by an agent or employee of the owner or operator, provided sufficient notice has been posted to advise the patrons that the device is being utilized. Each detention must be made in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the device or for the recovery of goods.
2. If the taking into custody and detention of the person by a law enforcement officer, security officer, merchant, or merchant's employee is done in compliance with the requirements of this section, the law enforcement officer, security officer, merchant, or merchant's employee may not be held criminally or civilly liable, including any liability for false arrest, false imprisonment, unlawful detention, malicious prosecution, intentional infliction of emotional distress, or defamation.

Approved March 21, 2003

Filed March 24, 2003

CHAPTER 109**SENATE BILL NO. 2268**

(Senators Dever, Espgaard)
(Representatives Delmore, Meier, Wrangham)

FRAUDULENT RECEIPT AND UPC LABEL USE

AN ACT to prohibit the fraudulent use of retail sales receipts and universal product code labels; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Fraudulent use of receipts and universal product code labels prohibited - Penalty. Except as otherwise provided in this section, any person who, with the intent to defraud a retailer, possesses, uses, utters, transfers, alters, counterfeits, or reproduces a retail sales receipt or a universal product code label is guilty of a class A misdemeanor. Any person who, with the intent to defraud a retailer, possesses fifteen or more fraudulent retail sales receipts or universal product code labels or who possesses a device the purpose of which is to manufacture fraudulent retail sales receipts or universal product code labels is guilty of a class C felony. For purposes of this section, "universal product code" means the twelve-digit identification number and bar code system developed by the uniform code council which is used to uniquely identify products.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 110**HOUSE BILL NO. 1301**

(Representatives Dosch, Kingsbury, Price)
(Senator Dever)

BIDIS PROHIBITED

AN ACT to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to the sale of bidis or beedies; 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:

Sale of bidis prohibited - Penalty. It is an infraction for any person to sell the tobacco product commonly referred to as bidis or beedies. For purposes of this section, "bidis" or "beedies" means a product containing tobacco which is wrapped in temburni leaf, also known as diospyros melanoxylon, or tendu leaf, also known as diospyros exculpra.

Approved April 7, 2003

Filed April 7, 2003

CHAPTER 111**SENATE BILL NO. 2211**

(Senators Lyson, Nelson, Trenbeath)
(Representatives Grande, Herbel, Kingsbury)

ARMED OFFENDER MANDATORY PRISON TERMS

AN ACT to amend and reenact section 12.1-32-02.1 of the North Dakota Century Code, relating to mandatory prison terms for armed offenders; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when, in the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm, or possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing an offense under subsection 1 ~~or~~, 2, or, except for the simple possession of marijuana, 6 of section 19-03.1-23. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:

1. If the offense for which the offender is convicted is a class A or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
2. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

This section applies even when being armed is an element of the offense for which the offender is convicted.

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

Approved April 4, 2003
Filed April 4, 2003

CHAPTER 112

SENATE BILL NO. 2044

(Legislative Council)
(Judiciary A Committee)

INSUFFICIENT FUNDS CHECK RESTITUTION

AN ACT to amend and reenact subsection 2 of section 6-08-16, subdivision p of subsection 4 of section 12.1-32-07, and section 12.1-32-08 of the North Dakota Century Code, relating to the civil penalty for issuing a check or draft without sufficient funds and the collection of restitution for insufficient funds checks; and to provide for a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 6-08-16 of the North Dakota Century Code is amended and reenacted as follows:

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 dollars, which are recoverable by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. 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. A If the person does not pay the instrument in full and any collection fees or costs not in excess of twenty-five 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.

⁵⁶ **SECTION 2. AMENDMENT.** Subdivision p of subsection 4 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

- p. Reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed 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 ~~3~~ 4 of section 12.1-32-08.

⁵⁶ Section 12.1-32-07 was also amended by section 9 of House Bill No. 1183, chapter 138.

SECTION 3. AMENDMENT. Section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of indigent defense costs and expenses - Conditions - Collection of restitution for insufficient funds checks - Continuing appropriation.

1. Before imposing restitution or reparation as a sentence or condition of probation, the court shall hold a hearing on the matter with notice to the prosecuting attorney and to the defendant as to the nature and amount thereof. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence it may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court, unless the court states on the record, based upon the criteria in this subsection, the reason it does not order restitution or orders only partial restitution. In determining whether to order restitution, the court shall take into account:
 - a. The reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually incurred as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2.
 - b. The ability of the defendant to restore the fruits of the criminal action or to pay monetary reparations, or to otherwise take action to restore the victim's property.
 - c. The likelihood that attaching a condition relating to restitution or reparation will serve a valid rehabilitational purpose in the case of the particular offender considered.

The court shall fix the amount of restitution or reparation, which may not exceed an amount the defendant can or will be able to pay, and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court shall order restitution be paid to the division of adult services for any benefits the division has paid or may pay under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident. An order that a defendant make restitution or reparation as a sentence or condition of probation may, unless the court directs otherwise, be filed, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced.

2. When the restitution ordered by the court under subsection 1 is the result of a finding that the defendant issued a check or draft without

sufficient funds or without an account, the court shall impose as costs the greater of the sum of ten dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The costs imposed under this subsection, however, may not exceed one thousand dollars. The state-employed clerks of district court shall remit the funds collected as costs under this subsection to the state treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and county-employed clerks of district court shall remit the funds collected as costs under this subsection to the county treasurer to be deposited in the county general fund.

3. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.
- ~~3.~~ 4. 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 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.
- b. A defendant who is required to reimburse indigent defense costs and expenses as a condition of probation and who is not willfully in default in that reimbursement may at any time petition the court that imposed the condition 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.
- c. If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection 6 or 7, as applicable, of section 12.1-32-07.

4. 5. If the court finds that the defendant is unable to pay a fine, supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations, the court may order the defendant to perform reasonable assigned work in lieu of all or part of a fine, a supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations. The defendant may not perform reasonable assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.

Approved April 8, 2003

Filed April 9, 2003

CHAPTER 113

HOUSE BILL NO. 1110

(Judiciary Committee)

(At the request of the Attorney General)

SEX OFFENDER REGISTRATION

AN ACT to amend and reenact subsections 3 and 7 of section 12.1-32-15 of the North Dakota Century Code, relating to sex offender registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 7 of section 12.1-32-15 of the North Dakota Century Code are amended and reenacted as follows:

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 equivalent to those offenses set forth in this section ~~if the individual was ordered by a court or required to register as a sexual offender, or for a crime against a child in another state or by the federal government;~~ 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. Within three days after registration, the registering law enforcement agency shall forward the statement, fingerprints, and photograph to the attorney general. If an individual required to register pursuant to this section has a change in name, school, or address, that individual shall inform in writing, within ten days, the law enforcement agency with whom that individual last registered of the individual's new name, school, ~~or residence~~ address, or employment address ~~if the individual is working in this state but not residing in this state~~. 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 days at the

law enforcement agency having local jurisdiction of the new place of residence, school, or employment. 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.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 114

HOUSE BILL NO. 1424

(Representatives Koppelman, F. Klein, Wald)
(Senators Christmann, Kilzer, Lindaas)

HUMAN CLONING PROHIBITED

AN ACT to prohibit human cloning; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Fetus" means a living organism of the species homo sapiens from eight weeks' development until complete expulsion or extraction from a woman's body, or until removal from an artificial womb or other similar environment designed to nurture the development of such organism.
2. "Human cloning" means human asexual reproduction, accomplished by introducing the genetic material of a human somatic cell into a fertilized or unfertilized oocyte, the nucleus of which has been or will be removed or inactivated, to produce a living organism with a human or predominantly human genetic constitution.
3. "Human embryo" means a living organism of the species homo sapiens from the single-celled state to eight weeks' development.
4. "Human somatic cell" means a cell having a complete set of chromosomes obtained from a living or deceased human organism of the species homo sapiens at any stage of development.
5. "Oocyte" means a human female germ cell, also known as an egg.

SECTION 2. Human cloning - Prohibition - Penalty.

1. A person may not intentionally or knowingly:
 - a. Perform or attempt to perform human cloning;
 - b. Participate in performing or attempting to perform human cloning;
 - c. Transfer or receive the product of a human cloning for any purpose; or
 - d. Transfer or receive, in whole or in part, any oocyte, human embryo, human fetus, or human somatic cell, for the purpose of human cloning.
2. Nothing in subsection 1 restricts areas of scientific research not specifically prohibited, including in vitro fertilization, the administration of fertility enhancing drugs, or research in the use of nuclear transfer or other cloning techniques to produce molecules, deoxyribonucleic acid,

tissues, organs, plants, animals other than humans, or cells other than human embryos.

3. A person who violates subdivision a or b of subsection 1 is guilty of a class C felony. A person who violates subdivision c or d of subsection 1 is guilty of a class A misdemeanor.

Approved April 7, 2003
Filed April 7, 2003

DEBTOR AND CREDITOR RELATIONSHIP

CHAPTER 115

SENATE BILL NO. 2302

(Senator Krebsbach)
(Representative Keiser)

MEDICAL LATE PAYMENT CHARGES

AN ACT to amend and reenact subsection 4 of section 13-01-14 of the North Dakota Century Code, relating to late payment charges on medical or hospital bills.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 13-01-14 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~No~~ A creditor may not charge, receive, or collect a late payment charge on medical or hospital bills; ~~except that if no payment has been made on the account within the last ninety days, a~~ during the initial ninety days following services. A late payment charge may be imposed at a rate that does not exceed one percent per month, but the charge cannot exceed twenty-five dollars per month. This subsection does not apply in cases of financial hardship as certified by the creditor.

Approved April 14, 2003

Filed April 14, 2003

CHAPTER 116

SENATE BILL NO. 2128

(Finance and Taxation Committee)

(At the request of the Department of Financial Institutions)

CONSUMER FINANCE FEES

AN ACT to amend and reenact sections 13-03.1-05, 13-04.1-04, 13-05-04, subsection 1 of section 51-17-07, and section 51-17-10 of the North Dakota Century Code, relating to consumer finance, money broker, collection agency, and sale of check license fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-05. Application and fees. Application for a license must be in writing, under oath, and in the form prescribed by the administrator. The application must give the location where the business is to be conducted and must contain such further information as the administrator may require, including the names and addresses of the partners, officers, directors, or trustees, and of such of the principal owners or members as will provide the basis for the investigations and findings contemplated by section 13-03.1-06. When making such application, the applicant shall include payment in the amount of ~~three~~ four hundred dollars, which is not subject to refund, as a fee for investigating the application, and ~~two~~ three hundred dollars for the annual license fee.

SECTION 2. AMENDMENT. Section 13-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-04. Fee and bond to accompany application for money broker license. The application for license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members, as will provide the basis for the investigation and findings contemplated by section 13-04.1-03. At the time of making such application, the applicant shall include payment in the sum of ~~three~~ four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of ~~two~~ three hundred dollars for the annual license fee, and provide a surety bond in the sum of twenty-five thousand dollars. Fees must be deposited in the financial institutions regulatory fund.

SECTION 3. AMENDMENT. Section 13-05-04 of the North Dakota Century Code is amended and reenacted as follows:

13-05-04. Application requirements - Fee and bond to accompany application for collection agency license. The application for a collection agency license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and

the principal owners or members as will provide the basis for the investigation and findings contemplated by section 13-05-03. At the time of making such application, the applicant shall include payment in the sum of ~~three~~ four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of ~~two~~ three hundred dollars for the annual license fee, and provide a surety bond in the sum of twenty thousand dollars. In addition, the applicant shall pay a fifty dollar annual fee for each branch location. Fees must be deposited in the financial institutions regulatory fund.

SECTION 4. AMENDMENT. Subsection 1 of section 51-17-07 of the North Dakota Century Code is amended and reenacted as follows:

1. An investigation fee of ~~three~~ four hundred dollars, which is not subject to refund, shall be in addition to the annual license fee. Fees must be deposited in the financial institutions regulatory fund.

SECTION 5. AMENDMENT. Section 51-17-10 of the North Dakota Century Code is amended and reenacted as follows:

51-17-10. Annual license fee. Each licensee shall pay to the commissioner annually on or before June fifteenth of each year a license fee of ~~two~~ three hundred dollars, which must be deposited in the financial institutions regulatory fund.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 117

SENATE BILL NO. 2158

(Finance and Taxation Committee)

(At the request of the Department of Financial Institutions)

CONSUMER FINANCE AND MONEY BROKER REGULATION

AN ACT to create and enact two new sections to chapter 13-03.1, two new sections to chapter 13-04.1, a new section to chapter 13-05, and two new sections to chapter 13-08 of the North Dakota Century Code, relating to authority to remove officers and employees from consumer finance, money broker, and deferred presentment service provider licensees and responses to department of financial institutions information requests; to amend and reenact sections 13-03.1-06, 13-03.1-10, 13-03.1-18, 13-04.1-06, 13-04.1-07, 13-04.1-13, 13-05-06, 13-05-07, 13-05-10, 13-08-11, and 13-08-15 of the North Dakota Century Code, relating to consumer finance company, money broker, and collection agency applicant qualifications, penalties for violating the consumer finance, money broker, collection agency, and deferred presentment service provider acts, and electronic record retention; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-03.1-06 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-06. Investigation of application - Requirements for issuance of license - Denial of license - Public record.

1. Upon the filing of an application and the payment of the fees therefor the administrator shall investigate the facts concerning the application.
2. The administrator shall issue a license to operate a consumer finance loan business if the administrator finds:
 - a. That the financial responsibility, financial condition, business experience, character, and general fitness of the applicant are such as to must reasonably warrant the belief that the business will be operated conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with this chapter, the administrator may review and consider the relevant business records and the capital adequacy of the applicant and the competence, experience, integrity, and financial ability of any person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant; and
 - b. That the applicant has assets of at least twenty-five thousand dollars for the operation of the business.

3. The administrator shall approve or deny every application for a license hereunder within sixty days from the filing thereof with the fee.
4. No application may be denied until the applicant has had a notice of a hearing on the application and an opportunity to be heard thereon. Whenever an application is denied, the administrator shall, within twenty days thereafter, prepare and keep on file in the administrator's office a written order of denial thereof. The order must contain its findings with respect thereto and the reasons supporting the denial, and the administrator shall send a copy thereof by registered mail to the applicant at the address set forth in the application within five days after the filing of the order. If the administrator finds the applicant is not qualified to be issued a license, the administrator shall return the license fee but may retain the investigation fee.
5. The administrator shall, upon request and payment of the annual license fee, deliver evidence of licensing under this chapter to the persons so previously licensed or authorized.

SECTION 2. A new section to chapter 13-03.1 of the North Dakota Century Code is created and enacted as follows:

Suspension and removal of consumer finance officers or employees.

1. The commissioner of financial institutions may issue and serve upon a consumer finance officer or employee and upon the consumer finance company involved a complaint stating the basis for the commissioner's belief that the officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
 - a. Violating a law, rule, order, or written agreement with the commissioner;
 - b. Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity; or
 - c. Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the complaint is served upon the officer or employee, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter an order suspending or temporarily removing the employee or officer from office for a period not exceeding three years from the effective date of the suspension or temporary removal.
4. A contested or default suspension or temporary removal order is effective immediately upon service of the order on the officer or employee and upon the consumer finance company. A consent order is effective as agreed. An officer or employee suspended or temporarily removed from office pursuant to this section is not eligible, while under

suspension, for reinstatement to a position within a licensed consumer finance company.

5. When an officer or employee, or other person participating in the conduct of the affairs of a consumer finance company is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from any further participation in the consumer finance affairs, or both. The order is effective immediately upon service of the order on the consumer finance company and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

SECTION 3. AMENDMENT. Section 13-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-10. Records - Annual reports - Biennial report.

1. Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the administrator to determine whether the licensee is complying with this chapter. The recordkeeping system records of a licensee is sufficient if the licensee makes the required information reasonably available may be maintained electronically provided all records can be reproduced upon request of the department of financial institutions and within the required statutory timeframe outlined in this section. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account the two years is measured from the date of each entry.
2. On or before July thirty-first each year the parent company of each licensee shall file with the administrator a composite annual report in the form prescribed by the administrator relating to all loans made by its licensees. The administrator shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. The administrator may make and publish annually an analysis and recapitulation of such reports.
3. The administrator shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, the administrator's report must include a summary or abstract of the annual reports filed with the administrator.

SECTION 4. A new section to chapter 13-03.1 of the North Dakota Century Code is created and enacted as follows:

Response to department requests. An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing of the request by the department of financial institutions. If the request for information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, or within thirty days of the mailing of the request, the department may deny the application.

SECTION 5. AMENDMENT. Section 13-03.1-18 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-18. Penalty. A person who violates any of the provisions of this chapter or rules adopted ~~thereunder~~ hereunder is guilty of a class A ~~misdemeanor~~ C felony. The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund. If a contract of loan in an amount exceeding one thousand dollars or any act in its making or collection violates the provisions of this chapter, the lender has no right to collect, receive, or retain any interest or charges whatsoever. If a contract of loan in an amount of one thousand dollars or less, or any willful act in its making or collection violates the provisions of this chapter, the lender has no right to collect, receive, or retain any interest or charges on that loan.

SECTION 6. AMENDMENT. Section 13-04.1-06 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-06. Powers of the department of financial institutions. Insofar as consistent with the provisions of law, the department of financial institutions has the power to:

1. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness, and issue license if approved which must reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with the chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the competence, experience, integrity, and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.
2. Establish codes of ethical conduct for licensees.

SECTION 7. A new section to chapter 13-04.1 of the North Dakota Century Code is created and enacted as follows:

Suspension and removal of money broker officers and employees.

1. The commissioner of financial institutions may issue and serve upon a money broker officer or employee and upon the licensee involved a complaint stating the basis for the commissioner's belief that the officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
 - a. Violating a law, rule, order, or written agreement with the commissioner;
 - b. Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity; or
 - c. Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the complaint is served upon the officer or employee, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter an order suspending or temporarily removing the employee or officer from office for a period not exceeding three years from the effective date of the suspension or temporary removal.
4. A contested or default suspension or temporary removal order is effective immediately upon service of the order on the officer or employee and upon the licensee. A consent order is effective as agreed. An officer or employee suspended or temporarily removed from office pursuant to this section is not eligible, while under suspension, for reinstatement to a position within a licensed money broker.
5. When an officer or employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the affairs of the money broker, or both. The order is effective immediately upon service of the order on the licensee and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

SECTION 8. AMENDMENT. Section 13-04.1-07 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-07. Manner in which records to be kept. Every money broker licensed under this chapter shall keep a record of all sums collected by them and of all loans and leases completed as a result of their efforts for a period of six years from the date of last entry thereon. The records of a licensee may be maintained electronically provided they can be reproduced upon request by the department of financial institutions and within the required statutory time period provided in this section.

SECTION 9. A new section to chapter 13-04.1 of the North Dakota Century Code is created and enacted as follows:

Response to department requests. An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing of the request by the department of financial institutions. If the request for information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, or within thirty days of the mailing of the request, the department may deny the application.

SECTION 10. AMENDMENT. Section 13-04.1-13 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-13. Penalty. Any person violating any of the provisions of this chapter or any rule or order of the department of financial institutions made pursuant to the provisions of this chapter or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful is guilty of a class C felony. The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 11. AMENDMENT. Section 13-05-06 of the North Dakota Century Code is amended and reenacted as follows:

13-05-06. Powers of the department of financial institutions. Insofar as consistent with other provisions of law, the department of financial institutions has the power to:

1. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness and issue licenses if approved which must reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with this chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the competence, experience, integrity, and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.

2. Conduct investigations and make an examination of any licensee or licensee's place of business, including all records of such business, and to subpoena witnesses any time they have reason to believe such is necessary. The licensee shall pay an examination or visitation fee and must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examination or visitation provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.
3. Establish codes of ethical conduct for licensees.
4. Adopt any and all rules and regulations necessary to carry out the purpose of this chapter.
5. Issue and serve upon any person or licensed collection agency, an order to cease and desist to take corrective action when the department has reason to believe the person or agency is violating, has violated, or is about to violate the provisions of this chapter. An interested party may appeal issuance of a cease and desist order under the provisions of chapter 28-32 by filing written notice of appeal within twenty days after service of the order.
6. ~~Impose civil money penalties against persons or agencies willfully violating an order to cease and desist in an amount not to exceed five hundred dollars for each violation. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing written notice of appeal within twenty days after service of the assessment of civil money penalties. Any civil money penalties collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.~~

SECTION 12. AMENDMENT. Section 13-05-07 of the North Dakota Century Code is amended and reenacted as follows:

13-05-07. Manner in which records and funds to be kept by collection agency. Every collection agency licensed under this chapter shall keep a record of all sums collected by it and of all disbursements made by it for a period of six years from the date of last entry thereon. The records of a licensee may be maintained electronically provided they can be reproduced upon request of the department of financial institutions and within the required statutory time period provided in this section. No collection agency, or any employees thereof, may intentionally make any false entry in any such collection agency record or intentionally mutilate, destroy, or otherwise dispose of any such record within the time limit provided in this section. No licensee under this chapter may commingle the money of collection agency customers with other than collection funds and shall maintain a separate bank account for such customer's funds and shall keep such funds in the bank account until disbursed to the customer.

SECTION 13. A new section to chapter 13-05 of the North Dakota Century Code is created and enacted as follows:

Response to department requests. An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is

specified, within thirty days of the mailing of the request by the department of financial institutions. If the request for information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, or within thirty days of the mailing of the request, the department may deny the application.

SECTION 14. AMENDMENT. Section 13-05-10 of the North Dakota Century Code is amended and reenacted as follows:

13-05-10. Penalty. Any person violating any of the provisions of this chapter is guilty of a class ~~A misdemeanor~~ C felony. The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 15. AMENDMENT. Section 13-08-11 of the North Dakota Century Code is amended and reenacted as follows:

13-08-11. Retention of records. Each licensee shall keep and use in the licensee's business any books, accounts, and records the commissioner may require to carry into effect the provisions of this chapter and the rules issued under this chapter. Every licensee shall preserve required books, accounts, and records for at least six years. The records of a licensee may be maintained electronically provided they can be reproduced upon request by the department of financial institutions and within the required statutory time period provided in this section.

SECTION 16. A new section to chapter 13-08 of the North Dakota Century Code is created and enacted as follows:

Response to department requests. An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing of the request by the department of financial institutions. If the request for information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, or within thirty days of the mailing of the request, the department may deny the application.

SECTION 17. A new section to chapter 13-08 of the North Dakota Century Code is created and enacted as follows:

Suspension and removal of deferred presentment service provider officers and employees.

1. The commissioner of financial institutions may issue and serve upon a deferred presentment service provider officer or employee and upon the licensee involved a complaint stating the basis for the commissioner's belief that the officer or employee is willfully engaging or has willfully engaged in any of the following conduct:

- a. Violating a law, rule, order, or written agreement with the commissioner;
 - b. Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity; or
 - c. Performing an act of commission or omission or practice, which is a breach of trust or a breach of fiduciary duty.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32.
 3. If a hearing is not requested within twenty days of the date the complaint is served upon the officer or employee, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter an order suspending or temporarily removing the employee or officer from office for a period not exceeding three years from the effective date of the suspension or temporary removal.
 4. A contested or default suspension or temporary removal order is effective immediately upon service of the order on the officer or employee and upon the licensee. A consent order is effective as agreed. An officer or employee suspended or temporarily removed from office pursuant to this section is not eligible, while under suspension, for reinstatement to a position within a licensed deferred presentment service provider.
 5. When an officer or employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the deferred presentment service provider affairs, or both. The order is effective immediately upon service of the order on the licensee and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
 6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

SECTION 18. AMENDMENT. Section 13-08-15 of the North Dakota Century Code is amended and reenacted as follows:

13-08-15. Violations - Cease and desist orders - Penalties. Except as otherwise provided in this chapter, any person who willfully provides deferred presentment services without a license is guilty of a class C felony and any person who violates any other provisions of this chapter or any rule adopted to implement this chapter is guilty of an infraction. If the commissioner finds, whether without a hearing or after a hearing if a hearing is requested within twenty days of notice of an

action by the commissioner under this section, that a person violated this chapter or any rule adopted to implement this chapter, the commissioner may do any one or more of the following:

1. Order the person to cease and desist violating this chapter or the rule.
2. Require the refund of any fees collected by the person in violation of this chapter.
3. Impose a civil penalty not to exceed ~~one thousand dollars per transaction for violation of a cease and desist order issued under this chapter or for violation of this chapter~~ five thousand dollars per violation upon a person or agency who willfully violates a law, rule, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

Approved March 14, 2003

Filed March 17, 2003

CHAPTER 118**HOUSE BILL NO. 1184**

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

**CONSUMER FINANCE, COLLECTION AGENCY, AND
MONEY BROKER LICENSING**

AN ACT to create and enact a new section to chapter 13-03.1 and a new section to chapter 13-05 of the North Dakota Century Code, relating to consumer finance license renewals and subpoena powers for collection agency information; and to amend and reenact sections 13-04.1-05 and 13-05-05 of the North Dakota Century Code, relating to money broker and collection agency license renewals and renewal late fees.

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:

Expiration and renewal of license. All licenses required herein expire on June thirtieth of each year and may be renewed. Renewals are effective the succeeding July first. Applications for renewal must be submitted thirty days before the expiration of the license and must be accompanied by the required annual fees. The form and content of renewal applications must be determined by the department of financial institutions and a renewal application may be denied upon the same grounds as would justify the denial of an initial application. When a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of fifty dollars for the renewal of the license. A consumer finance license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a consumer finance license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The consumer finance license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

SECTION 2. AMENDMENT. Section 13-04.1-05 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-05. Expiration and renewal of license. All licenses required herein expire on June thirtieth of each year and may be renewed. Renewals are effective the succeeding July first. Applications for renewal must be submitted ~~on or before~~ thirty days before the expiration of the license and must be accompanied by the required annual fees. The form and content of renewal applications must be determined by the department of financial institutions, and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of ~~five~~ fifty dollars

for the renewal of such license. A money broker license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a money broker license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The money broker license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

SECTION 3. AMENDMENT. Section 13-05-05 of the North Dakota Century Code is amended and reenacted as follows:

13-05-05. Expiration and renewal of license. All licenses required herein expire on June thirtieth of each year and ~~must~~ may be renewed ~~on the succeeding first day of July upon payment of required annual fees.~~ The department of financial institutions may charge an additional fee of five dollars for the renewal of a license after June thirtieth. Applications for renewal must be submitted thirty days before the expiration of the license and must be accompanied by the required annual fees. The form and content of renewal applications must be determined by the department of financial institutions and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of fifty dollars for the renewal of the license. A collection agency license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a collection agency license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The collection agency license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

SECTION 4. A new section to chapter 13-05 of the North Dakota Century Code is created and enacted as follows:

Investigations and subpoenas.

1. The department of financial institutions may:
 - a. Make such public or private investigation within or outside this state as it deems necessary to determine whether a person has violated or is about to violate a provision of this chapter or a rule or order under this chapter, or to aid in the enforcement of this chapter or in the adopting of rules and forms under this chapter.
 - b. Require or permit a person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated.
 - c. Publish information concerning a violation of this chapter or a rule or order under this chapter.

2. For the purpose of an investigation or proceeding under this chapter, the department of financial institutions may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.
3. In case of contumacy by, or refusal to obey a subpoena issued to, a person, the district court, upon application by the department of financial institutions, may issue to the person an order requiring the person to appear before the department, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.
4. A person is not excused from attending and testifying or from producing a document or record before the department of financial institutions, or in obedience of the subpoena of the department or in a proceeding instituted by the department, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture; but an individual may not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Approved March 17, 2003
Filed March 17, 2003

DOMESTIC RELATIONS AND PERSONS

CHAPTER 119

SENATE BILL NO. 2067

(Judiciary Committee)

(At the request of the Labor Commissioner)

HUMAN RIGHTS COMPLAINT FILING

AN ACT to amend and reenact section 14-02.4-19 of the North Dakota Century Code, relating to the time limitations for filing human rights complaints in district court.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-19 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-19. Actions - Limitations. Any person claiming to be aggrieved by a discriminatory practice with regard to public services or public accommodations in violation of this chapter may file a complaint of discriminatory practices with the department or may bring an action in the district court in the judicial district in which the unlawful practice is alleged to have been committed or in the district in which the person would have obtained public accommodations or services were it not for the alleged discriminatory act within one hundred eighty days of the alleged act of wrongdoing. Any person claiming to be aggrieved by any discriminatory practice other than public services or public accommodations in violation of this chapter may file a complaint of discriminatory practice with the department or may bring an action in the district court in the judicial district in which the unlawful practice is alleged to have been committed, in the district in which the records relevant to the practice are maintained and administered, or in the district in which the person would have worked or obtained credit were it not for the alleged discriminatory act within three hundred days of the alleged act of wrongdoing. The if a complaint of a discriminatory practice is first filed with the department, the period of limitation for bringing an action in the district court is tolled while the complaint is pending with ninety days from the date the department issues a written notice to the complainant that administrative action on the complaint has concluded.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 120

HOUSE BILL NO. 1083

(Judiciary Committee)

(At the request of the Labor Commissioner)

HUMAN RIGHTS AND HOUSING INFORMATION CONFIDENTIALITY

AN ACT to amend and reenact sections 14-02.4-21, 14-02.5-22, and 14-02.5-46 of the North Dakota Century Code, relating to confidential information obtained under the human rights and housing discrimination laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-02.4-21 of the North Dakota Century Code is amended and reenacted as follows:

14-02.4-21. Records exempt. A complaint ~~received by~~ filed with the department under this chapter is an open record. Information obtained during ~~any~~ an investigation conducted by the department under this chapter is exempt from section 44-04-18 before the institution of any judicial proceedings or administrative hearing relating to the complaint under this chapter or before the administrative closure of a complaint by the department. The department may disclose to the complainant or the respondent, or a representative of the complainant or the respondent, information obtained during an investigation if ~~determined~~ deemed necessary by the department for securing an appropriate resolution of a complaint. The department may disclose ~~to federal officials~~ information obtained ~~under this chapter~~ during an investigation to a federal agency if necessary for the processing of complaints under an agreement with the agency. ~~The department may not disclose anything said or done as part of the informal negotiation or conciliation efforts relating to a complaint under this chapter except to the federal equal employment opportunity commission as needed for proper processing and closure.~~ Individually identifiable health information obtained during an investigation may not be disclosed by the department except to a federal agency if necessary for the processing of complaints under an agreement with the agency. Statements made or actions taken during conciliation efforts relating to a complaint under this chapter may not be disclosed by the department, except to a federal agency if necessary for the processing of complaints under an agreement with the agency, and may not be used as evidence in a subsequent proceeding under this chapter without the written consent of the parties to the conciliation. A conciliation agreement is an open record unless the complainant and respondent agree that it is not and the department determines that disclosure is not necessary to further the purposes of this chapter. Investigative working papers are exempt from section 44-04-18.

SECTION 2. AMENDMENT. Section 14-02.5-22 of the North Dakota Century Code is amended and reenacted as follows:

14-02.5-22. Conciliation.

- 4- The department shall, during the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the department, to the extent feasible, engage in conciliation with respect to

the complaint. A conciliation agreement between a respondent and the complainant is subject to departmental approval. A conciliation agreement may provide for binding arbitration or another method of dispute resolution. Dispute resolution that results from a conciliation agreement may authorize appropriate relief, including monetary relief.

2. ~~A conciliation agreement is public information unless the complainant and respondent agree that it is not and the department determines that disclosure is not necessary to further the purposes of this chapter. Statements made or actions taken in the conciliation may not be made public by the department or used as evidence in a subsequent proceeding under this chapter without the written consent of the parties to the conciliation.~~

SECTION 3. AMENDMENT. Section 14-02.5-46 of the North Dakota Century Code is amended and reenacted as follows:

14-02.5-46. Records exempt. A complaint filed with the department under section 14-02.5-18 is an open record. Information obtained during an investigation conducted by the department under this chapter is exempt from section 44-04-18 ~~prior to~~ before the institution of any judicial proceedings or administrative hearing relating to the complaint under this chapter or before the administrative closure of a complaint by the department. The ~~commissioner~~ department may disclose to the complainant or the respondent, or representatives of the complainant or respondent, information obtained ~~under this section during an investigation~~ if deemed necessary by the ~~commissioner~~ department for securing an appropriate resolution of a complaint. The department may disclose information obtained during an investigation to a federal agency if necessary for the processing of complaints under an agreement with the agency. Individually identifiable health information obtained during an investigation may not be disclosed by the department except to a federal agency if necessary for the processing of complaints under an agreement with the agency. Statements made or actions taken during conciliation efforts relating to a complaint under this chapter may not be disclosed by the department, except to a federal agency if necessary for the processing of complaints under an agreement with the agency, and may not be used as evidence in a subsequent proceeding under this chapter without the written consent of the parties to the conciliation. A conciliation agreement is an open record unless the complainant and respondent agree that it is not and the department determines that disclosure is not necessary to further the purposes of this chapter. Investigative working papers are exempt from section 44-04-18.

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 121**HOUSE BILL NO. 1081**

(Judiciary Committee)

(At the request of the Labor Commissioner)

HOUSING DISCRIMINATION LAW EXEMPTION

AN ACT to amend and reenact subsection 2 of section 14-02.5-09 of the North Dakota Century Code, relating to dwellings exempt from certain provisions of the housing discrimination laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 14-02.5-09 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~Sections~~ Section 14-02.5-02 and sections 14-02.5-04 through 14-02.5-08 do not apply to the sale or rental of the rooms or units in a dwelling containing living quarters occupied by or intended to be occupied by not more than four families living independently of each other, if the owner maintains and occupies one of the living quarters as the owner's residence.

Approved March 20, 2003

Filed March 20, 2003

CHAPTER 122

HOUSE BILL NO. 1267 (Representatives Keiser, Kreidt, Porter) (Senators Espegard, Wardner)

MEDICAL CARE LIABILITY OF SPOUSES

AN ACT to amend and reenact section 14-07-08 of the North Dakota Century Code, relating to the liabilities of a husband and wife for medical care debts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-07-08 of the North Dakota Century Code is amended and reenacted as follows:

14-07-08. Separate and mutual rights and liabilities of husband and wife.

The separate and mutual rights and liabilities of a husband and a wife are as follows:

1. Neither the husband nor the wife as such is answerable for the acts of the other.
2. The earnings of one spouse are not liable for the debts of the other spouse, and the earnings and accumulations of either spouse and of any minor children living with either spouse or in one spouse's custody, while the husband and wife are living separate from each other, are the separate property of each spouse.
3. The husband and wife are liable jointly and severally for any debts contracted by either, while living together, for necessary household supplies of food, clothing, and fuel, medical care, and for shelter for themselves and family, and for the education of their minor children.
4. The separate property of the husband or wife is not liable for the debts of the other spouse but each is liable for their own debts contracted before or after marriage.

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 123

HOUSE BILL NO. 1072

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT

AN ACT to create and enact a new chapter to title 14 of the North Dakota Century Code, relating to the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act; to amend and reenact section 14-07.1-06 of the North Dakota Century Code, relating to penalties for violation of a protection order; to repeal section 14-07.1-02.2 of the North Dakota Century Code, relating to foreign domestic violence protection orders; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁷ **SECTION 1. AMENDMENT.** Section 14-07.1-06 of the North Dakota Century Code is amended and reenacted as follows:

14-07.1-06. Penalty for violation of a protection order. Whenever a protection order is granted under section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of a protection order is a class C felony. ~~Violation of a foreign protection order entitled to full faith and credit recognition under section 14-07.1-02.2 is a class A misdemeanor. A second or subsequent violation of such an order is a class C felony.~~

SECTION 2. A new chapter to title 14 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter:

1. "Foreign protection order" means a protection order issued by a tribunal of another state.
2. "Issuing state" means the state whose tribunal issues a protection order.
3. "Mutual foreign protection order" means a foreign protection order that includes provisions issued in favor of both the protected individual seeking enforcement of the order and the respondent.
4. "Protected individual" means an individual protected by a protection order.

⁵⁷ Section 14-07.1-06 was also amended by section 3 of Senate Bill No. 2329, chapter 105.

5. "Protection order" means an injunction or other order, issued by a tribunal under the domestic violence or family violence laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to another individual. The term includes an injunction or other order issued under the antistalking laws of the issuing state.
6. "Respondent" means the individual against whom enforcement of a protection order is sought.
7. "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. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.
8. "Tribunal" means a court, agency, or other entity authorized by law to issue or modify a protection order.

Judicial enforcement of order.

1. A tribunal of this state shall enforce the terms of a valid foreign protection order, including terms that provide relief that a tribunal of this state would lack power to provide but for this section. A tribunal of this state shall enforce a valid foreign protection order issued by a tribunal, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. A tribunal of this state may not enforce an order issued by a tribunal that does not recognize the standing of a protected individual to seek enforcement of the order.
2. A tribunal of this state shall enforce the provisions of a valid foreign protection order which governs custody and visitation. The custody and visitation provisions of the order must have been issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.
3. A protection order is valid if it:
 - a. Identifies the protected individual and the respondent;
 - b. Is currently in effect;
 - c. Was issued by a tribunal that had jurisdiction over the parties and matter under the law of the issuing state; and
 - d. Was issued after the respondent was provided with reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the issuing of the order, in a manner consistent with the rights of the respondent to due process.

4. A person authorized under the law of this state to seek enforcement of a foreign protection order establishes a prima facie case for its validity by presenting an order valid on its face.
5. Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.
6. A tribunal of this state may enforce the provisions of a mutual foreign protection order which favor a respondent only if:
 - a. The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and
 - b. The tribunal of the issuing state made specific findings in favor of the respondent.

Nonjudicial enforcement of order.

1. A law enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this state. Presentation of a protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.
2. If the protection order is not presented, the officer may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.
3. If a law enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order and make a reasonable effort to serve the order upon the respondent. After informing the respondent and serving the order, the officer shall allow the respondent a reasonable opportunity to comply with the order before enforcing the order.
4. Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order under this chapter.

Registration of order.

1. Any individual may register a foreign protection order in this state. To register a foreign protection order, an individual shall present a certified copy of the order to any clerk of district court in this state.
2. Upon receipt of a protection order, the clerk of district court shall register the order in accordance with this section. After the order is registered, the clerk of district court shall furnish to the individual registering the order a certified copy of the registered order. If a foreign order is

registered, the clerk of district court shall transmit a copy of the order to the appropriate law enforcement agency.

3. The clerk of district court shall register an order upon presentation of a copy of a protection order which has been certified by the issuing state. A registered foreign protection order which is inaccurate or is not currently in effect shall be corrected or removed from the registry in accordance with the law of this state.
4. An individual registering a foreign protection order shall file an affidavit by the protected individual that, to the best of the individual's knowledge, the order is currently in effect.
5. A foreign protection order registered under this chapter may be entered in any existing state or federal registries of protection orders, in accordance with state or federal law.
6. A fee may not be charged for the registration of a foreign protection order or the correction or removal of a foreign protection order.

Immunity. This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of district court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission is done in good faith in an effort to comply with this chapter.

Other remedies. Pursuant of remedies under this chapter does not preclude a protected individual from pursuing other legal or equitable remedies against the respondent.

Penalty. Violation of a protection order under this chapter is a class A misdemeanor. A second or subsequent violation of such an order is a class C felony.

SECTION 3. REPEAL. Section 14-07.1-02.2 of the North Dakota Century Code is repealed.

SECTION 4. APPLICATION. Section 2 of this Act applies to any protection order issued before, on, or after August 1, 2003, including any continuing action for enforcement of a foreign protection order commenced before August 1, 2003. A request for enforcement of a foreign protection order brought after July 31, 2003, for violations of a foreign protection order occurring before August 1, 2003, is governed by the provisions of section 2 of this Act.

Approved March 19, 2003
Filed March 19, 2003

CHAPTER 124**SENATE BILL NO. 2246**

(Senators Fischer, Heitkamp, J. Lee)
(Representatives Delmore, D. Johnson, Wieland)

**CHILD SUPPORT ARREARS AND LICENSE
SUSPENSIONS**

AN ACT to create and enact a new subsection to section 14-09-09.3 and a new section to chapter 50-09 of the North Dakota Century Code, relating to late fees charged to a child support income payer and the withholding, restriction, or suspension of licenses, permits, and registrations for failure to pay child support or comply with a subpoena; and to amend and reenact subsection 3 of section 14-09-08.1, subsection 2 of section 14-09-08.16, subsection 2 of section 14-09-09.3, and subsection 6 of section 14-09-25 of the North Dakota Century Code, relating to notice of child support arrears, duties and responsibilities of a child support income payer, and judgment interest for past-due child support.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 14-09-08.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Whenever there is failure to make the payments as required, the clerk of court shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request a district judge of the judicial district to issue a citation for contempt of court against the person who has failed to make the payments and the citation must be served on that person as provided by the North Dakota Rules of Civil Procedure. The clerk of court may delay sending a notice of arrears or request for a citation for contempt of court under this section if a notice has been mailed to the obligor under section 6 of this Act.

SECTION 2. AMENDMENT. Subsection 2 of section 14-09-08.16 of the North Dakota Century Code is amended and reenacted as follows:

2. Within ten days after receipt of a request for information issued under subsection 1, an income ~~payer~~ payer shall provide the requester with a written statement informing the requester whether or not the income ~~payer~~ payer is, or within the ~~thirty~~ thirty one hundred eighty days immediately preceding receipt of the request has been, an income ~~payer~~ payer with respect to that obligor. If the income ~~payer~~ payer is, or within the previous ~~thirty~~ thirty one hundred eighty days has been, an income ~~payer~~ payer with respect to that obligor, the income ~~payer~~ payer shall furnish information to the requester including:
 - a. The amount of any income currently paid to the obligor, calculated on a monthly basis;

- b. The total amount of income paid to the obligor in the twelve months preceding the month in which the request is received;
- c. Information regarding any health insurance that may be made available to the obligor's children through the income ~~payer~~ payer;
- d. The social security number under which payment of any income by the income ~~payer~~ payer to the obligor is reported;
- e. The obligor's address; and
- f. If the income ~~payer~~ payer is no longer an income ~~payer~~ payer with respect to that obligor, the date of last payment and any forwarding address.

SECTION 3. AMENDMENT. Subsection 2 of section 14-09-09.3 of the North Dakota Century Code is amended and reenacted as follows:

2. Any income ~~payer~~ payer who fails or refuses to deliver income pursuant to an income withholding order, when such income ~~payer~~ payer has had in its possession such income, is personally liable for the amount of such income which the income ~~payer~~ payer failed or refused to deliver, together with costs, interest, and reasonable attorney's fees. If an income payer fails or refuses to deliver income for more than fourteen business days after the date an obligor is paid, the court shall award damages in an amount equal to two hundred dollars or actual damages caused by the violation, whichever is greater, in addition to costs, interest, late fees, and reasonable attorney's fees. Any damages awarded under this subsection must be reduced by the amount of any late fees for the same payment which have been collected by the public authority under section 4 of this Act. Any damages collected by the public authority under this subsection must be paid to the state disbursement unit for distribution under section 14-09-25 and any remaining balance must be paid to the obligor. If an income payer has failed to deliver income for more than one obligor, any damages collected under this section must be divided equally among all affected obligors. Each remedy authorized in this subsection is a remedial sanction as defined in section 27-10-01.1.

SECTION 4. A new subsection to section 14-09-09.3 of the North Dakota Century Code is created and enacted as follows:

An income payer who fails to deliver income for more than seven business days after the date one or more obligors are paid may be charged a late fee equal to twenty-five dollars per obligor for each additional business day the payment is delinquent or seventy-five dollars for each additional business day the payment is delinquent, whichever is greater. A late fee charged under this subsection is payable fifteen days after service on the employer, by first-class mail, of notice of the imposition of the late fee. Failure to pay a late fee under this subsection may be punished as a contempt of court. Any late fee collected by the public authority under this subsection must be paid to the state disbursement unit for distribution under section 14-09-25 and any remaining balance must be paid to the obligor. If an income payer has failed to deliver income for more than one obligor, any late fees

collected under this section must be divided equally among all affected obligors.

SECTION 5. AMENDMENT. Subsection 6 of section 14-09-25 of the North Dakota Century Code is amended and reenacted as follows:

6. Notwithstanding section 28-20-36, the state disbursement unit shall disburse collected child support payments in conformity with title IV-D of the Social Security Act [Pub. L. 93-647; 88 Stat. 2351; 42 U.S.C. 651 et seq.]. Any disbursement made in error is not a gift and must be repaid. The public authority may take any action not inconsistent with law to secure repayment of any disbursement made in error. Interest accrued on an unpaid child support obligation is child support. To the extent consistent with the requirements of title IV-D, a payment received with respect to a child support arrearage must first be applied to accrued interest on the earliest arrearage, and then to the principal of that arrearage. The public authority may calculate judgment interest accrued ~~only~~ on child support obligations that first became arrearages after July 1, 2002. The public authority shall enter in its records judgment interest on child support obligations that first became arrearages on or before July 1, 2002, for periods before January 1, 2004, only if a court has ordered the interest amount calculated by some individual or entity other than the public authority and approved the calculated amount. For child support obligations that first became arrearages on or before July 1, 2002, the public authority may calculate judgment interest accrued only for periods on or after January 1, 2004. For purposes of this subsection, arrearage means an unpaid child support obligation that was due in a month prior to the current month.

SECTION 6. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

Suspension of occupational, professional, recreational, motor vehicle operator, and vehicle licenses and registrations for nonpayment of child support or failure to obey subpoena.

1. As used in this section:

a. "License" means:

- (1) Any certificate, permit, or license issued by an agency of the state or a political subdivision of the state which the obligor is required to obtain prior to engaging in the obligor's occupation or profession;
- (2) Any certificate, permit, or license issued by lottery or by tag which the obligor is required to obtain prior to engaging in a recreational activity; and
- (3) Any operator's license or vehicle license or registration which the obligor is required to obtain prior to operating or owning a vehicle in this state. As used in this section, "vehicle" includes any motor vehicle as defined in section 39-01-01, aircraft, snowmobile, motorboat, or personal watercraft.

- b. "Licensee" means a person who has applied for or currently possesses a license.
 - c. "Licensing authority" means an agency of the state or a political subdivision of the state that issues a license, including occupational or professional boards, the game and fish department, and the department of transportation.
2. The state agency, directly or through agents and child support agencies, may withhold, restrict, or suspend one or more licenses issued to:
- a. A person who has failed, after receiving proper notice, to comply with a subpoena relating to a paternity or child support matter;
 - b. An obligor who is in arrears in child support in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less; or
 - c. An obligor who is not in compliance with an existing payment plan that has been negotiated between the obligor and the state agency under this section.
3. Before withholding, restricting, or suspending a license under this section, the state agency shall send a notice to the licensee by first-class mail to the licensee's last-known address stating that the licensee has thirty days after the date of the notice to comply with the subpoena, satisfy the arrearage in full, or negotiate a payment plan with the state agency under this section. The notice must further state that the licensee may contest the action of the state agency by making a written request for a court hearing to the state agency within ten days of the date of the notice.
4. Upon request for a hearing under this section, the state agency shall petition the court that issued or considered the child support order for an order authorizing the state agency to withhold, restrict, or suspend one or more licenses issued to the licensee. If a child support order was issued by a court or administrative tribunal in another jurisdiction, the hearing may be held in any court of this state which has jurisdiction to enforce that order or, if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the licensee.
5. The court shall authorize the state agency to withhold, restrict, or suspend a license only if it finds that the licensee's failure to comply with a subpoena, a child support order, or an existing payment plan was willful. Upon a showing by the state agency that the licensee has failed to comply with a subpoena, owes arrears in an amount greater than three times the obligor's current or most recent monthly child support obligation or five thousand dollars, whichever is less, or is not in compliance with an existing payment plan between the obligor and the state agency under this section, the licensee has the burden of proving that the delinquency or failure to comply was not willful.
6. The state agency shall notify the appropriate licensing authority that the state agency has withheld, restricted, or suspended a license under this section. A license that is withheld, restricted, or suspended by the state agency under this section may be reinstated only by the state agency

after the licensee complies with the subpoena, satisfies the arrearage in full, or enters into a payment plan with the state agency under this section.

7. An obligor and the state agency may enter into a payment plan under which the obligor agrees to satisfy the obligor's total child support obligation, including arrears, within a period not to exceed ten years. A payment plan under this section must require the obligor to make an immediate payment to the state disbursement unit in an amount equal to five percent of the total arrears owed by the obligor or five hundred dollars, whichever is greater. The state agency may waive or reduce the immediate payment that is due under a payment plan if the obligor's current or most recent monthly support obligation is less than five hundred dollars. The state agency may require that a payment plan under this section include satisfaction of all court-ordered child support obligations of the obligor. The obligor's current or most recent monthly support obligation under section 14-09-09.30 must be considered when determining the duration of a payment plan under this section and the payments due under the agreement. A payment plan under this section is not a modification of any child support obligation of the obligor and does not bar judicial review of a child support order under section 14-09-08.4 or other enforcement actions by the obligee or the state agency.
8. An action of the state agency to withhold, restrict, or suspend a license under this section may not be appealed to the state agency or to the licensing authority, including an appeal under chapter 28-32. Section 50-09-14 does not apply to actions taken by the state agency under this section.
9. Except for statistical purposes, an entry on the driving record or abstract of a restriction or suspension under this section after the restriction or suspension ceases may not be available to the public other than by order of a court of competent jurisdiction.
10. A licensing authority and any person acting on its behalf is not liable for any actions taken to withhold, restrict, or suspend a license under this section. This section does not limit the ability of a licensing authority to withhold, restrict, or suspend a license on any other grounds authorized by law.

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 125

SENATE BILL NO. 2160

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD AND MEDICAL SUPPORT OBLIGATIONS

AN ACT to create and enact sections 14-09-08.20, 14-09-09.32, 14-09-09.33, and 14-09-09.34 and a new section to chapter 50-09 of the North Dakota Century Code, relating to medical support, agreements to waive child support, judicial offsets of child support, income payer duties, and cooperative agreements for child support enforcement services; to amend and reenact sections 14-09-08.11, 14-09-09.13, and 14-09-09.15, subsections 1 and 9 of section 14-09-09.16, and sections 14-09-09.17, 14-09-09.30, and 26.1-36.5-03 of the North Dakota Century Code, relating to child support, medical support, and past-due child support; to provide a continuing appropriation; to provide for a report; 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 14-09-08.11 of the North Dakota Century Code is amended and reenacted as follows:

14-09-08.11. Eligible child - Employer to permit enrollment - Employer duties and liabilities - Obligor contest.

1. When an obligor is required to cover a ~~minor~~ child as a beneficiary under section 14-09-08.10, the child is eligible for health insurance coverage as a dependent of the obligor ~~until the child's eighteenth birthday or until further order of the court.~~ If health insurance coverage required under section 14-09-08.10 is available through an ~~income payer employer,~~ the income payer employer must:
 - a. Permit the obligor to enroll under family coverage any child who is otherwise eligible for coverage without regard to any open enrollment restrictions;
 - b. If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application by the obligee;
 - c. ~~If the obligor is enrolled but fails to make application to obtain coverage for the child, enroll the child under family coverage upon application by the public authority, subject to subsection 2, whenever the child receives~~ Upon receipt of the national medical support notice issued under section 14-09-08.20:
 - (1) ~~Benefits through temporary assistance for needy families or foster care under chapter 50-09, or medical assistance under chapter 50-24.1; or~~ Comply with the provisions of the national medical support notice; and

- (2) Services provided upon application of an obligee to the child support agency Transfer the national medical support notice to the insurer that provides any such health insurance coverage for which the child is eligible, within twenty business days after the date of the national medical support notice;
- d. Not disenroll or eliminate coverage for any child unless the ~~income payer~~ employer has eliminated family health coverage for all of its employees or the employer is provided satisfactory written evidence that:
- (1) The order issued under section 14-09-08.10 is no longer in effect; or
- (2) The child is or will be enrolled in comparable coverage that will take effect no later than the effective date of disenrollment; ~~or~~
- (~~3~~) ~~The income payer has eliminated family health coverage for all of its employees;~~
- e. Withhold from the obligor's compensation the obligor's share, if any, of premiums for health insurance coverage and pay this amount to the ~~health insurance provider~~ insurer; and
- f. If the amount required to be withheld under subdivision e, either alone or when added to the total of any withholding required by an order issued under section 14-09-09.15, exceeds fifty percent of the obligor's disposable income, withhold fifty percent of the obligor's disposable income; ;
- g. In the case of an obligor contest under subsection 2, initiate and continue withholding until the employer receives notice that the contest is resolved; and
- h. Promptly notify the public authority, in the same manner as required under subsection 9 of section 14-09-09.16, whenever the obligor's employment is terminated.
2. ~~Before making application under subdivision e of subsection 1, the public authority shall provide notice to the obligor that the obligor may contest the proposed application by filing a written request for a hearing within ten days of the date the notice is issued. If the obligor contests the application for coverage, a hearing must be held, and the court shall require the public authority to make application if it determines coverage for the child is available to the obligor at reasonable cost. The obligor may contest the withholding provided for in subdivision e of subsection 1 by filing a request for a hearing within ten days of the date of the national medical support notice issued under section 14-09-08.20. If the obligor contests that withholding, the court shall:~~
- a. Hold a hearing within ten working days after the date of the request; and
- b. Confirm the withholding in the absence of a finding:

- (1) Of a mistake of fact; or
 - (2) That the obligee is required to provide health insurance coverage pursuant to section 14-09-08.10.
3. Withholding required by an order issued under section 14-09-09.15 must be satisfied before any payment is made to the ~~health insurance provider~~ 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 ~~income payer~~ employer must promptly inform the ~~clerk of court or~~ public authority ~~that issued the order under section 14-09-09.15~~ of the insufficiency.
4. An employer receiving a national medical support notice under this section is subject to the same duties and liabilities as an income payer under section 14-09-09.3 unless the context indicates otherwise.
5. For purposes of this section:
 - a. "Employer" means an entity or individual who would be determined to be an employer under section 3401(d) of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401(d)], and includes any governmental entity and any labor organization; and
 - b. "Insurer" has the meaning provided in section 26.1-36.5-01.

SECTION 2. Section 14-09-08.20 of the North Dakota Century Code is created and enacted as follows:

14-09-08.20. National medical support notice - Public authority duties.

1. When an obligor 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 obligor's employer has been identified, the public authority shall use the national medical support notice, when appropriate, to enforce the provision of health insurance coverage for the child. The public authority shall:
 - a. Serve the national medical support notice on the employer by first-class mail or in any other manner agreed to by the employer:
 - (1) Within two business days after the date of entry in the state directory of new hires of an employee who is an obligor of an order being enforced under title IV-D if the employer was identified based upon that entry; or otherwise
 - (2) Within a reasonable time;
 - b. Serve notice of the national medical support notice on the obligor by first-class mail at the obligor's last-known address;
 - c. If the insurer notified the public authority of more than one available health insurance coverage option, select:

- (1) The option chosen by the state medicaid agency if an assignment under chapter 50-24.1 is in effect for the child;
 - (2) The option timely chosen by the obligee if paragraph 1 does not apply;
 - (3) The option that provides basic coverage, that is reasonably accessible to the child, and for which the obligor's share of the premium is lowest if paragraphs 1 and 2 do not apply; or
 - (4) The option that is reasonably accessible to the child and for which the obligor's share of the premium is lowest if paragraphs 1, 2, and 3 do not apply; and
 - d. Promptly notify the employer when a current order for medical support for which the public authority is responsible is no longer in effect.
2. If the public authority does not select an option under subdivision c of subsection 1 within twenty business days, the insurer shall enroll the child, and the obligor if necessary, in the insurer's default plan, if any.
 3. The public authority, the state medicaid agency, and any official, employee, or agent of either agency are immune from any liability arising out of the selection of, or failure to select, an option under subdivision c of subsection 1.
 4. For purposes of this section:
 - a. "Basic coverage" means:
 - (1) Health insurance that includes coverage for the following medically necessary services: preventive care, emergency care, inpatient and outpatient hospital care, physician services whether provided within or outside a hospital setting, diagnostic laboratory, and diagnostic and therapeutic radiological services; or
 - (2) A basic group health benefit plan approved under section 26.1-36.3-08;
 - b. "Employer" means an entity or individual who would be determined to be an employer under section 3401(d) of the Internal Revenue Code of 1986, as amended [26 U.S.C. 3401(d)], and includes any governmental entity and any labor organization;
 - c. "Insurer" has the meaning provided in section 26.1-36.5-01;
 - d. "National medical support notice" means the notice promulgated pursuant to section 401(b) of the Child Support Performance and Incentive Act of 1998 [Pub. L. 105-200; 112 Stat. 645] and regulations adopted thereunder; and
 - e. "Title IV-D" has the meaning provided in section 50-09-01.

SECTION 3. AMENDMENT. Section 14-09-09.13 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.13. Procedure - Notice to obligor. If immediate income withholding under section 14-09-09.24 has not been implemented and an obligor is delinquent, if an obligee's request for income withholding is approved, or if a court changes its finding that there is good cause not to require immediate income withholding, the ~~clerk of court or~~ public authority shall serve the notice required under this section upon the obligor whenever issuing an income withholding order. The notice must state:

1. That the obligor is delinquent in the payment of child support, that a request for withholding has been made by the obligee and approved by a child support agency, or that there is no longer good cause not to require immediate income withholding, as the case may be, and the obligor is therefore subject to an income withholding order on all income.
2. The amount of child support owed and the amount of arrearage, if any.
3. The total amount of money that will be withheld by the income ~~payer~~ payer from the obligor's income in each month as determined under section 14-09-09.30.
4. That the income ~~payer~~ payer may withhold an additional sum of three dollars to cover the income ~~payer's~~ payer's expenses.
5. That the income withholding order has been issued without further order of the court.
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this section.
7. That if the obligor contests the income withholding order pursuant to section 14-09-09.14, a hearing will be held and the court will determine and issue an order consistent with the requirements of section 14-09-09.14.
8. That the income withholding order applies to any current or subsequent income ~~payer~~ payer or period of employment.

SECTION 4. AMENDMENT. Section 14-09-09.15 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.15. Form - Effect of income withholding order. The income withholding order must be issued in the name of the state of North Dakota in the standard format for notice of the order prescribed by the secretary of the United States department of health and human services under authority of 42 U.S.C. 666(b)(6)(A)(ii), contain only the information necessary for the income payer to comply with the income withholding order, and be directed to all current and subsequent income payers of the obligor. The income withholding order is binding on the income payer until further notice by the ~~clerk of the~~ public authority and applies to all current and subsequent periods in which income is owed the obligor by the income payer. The income withholding order has priority over any other legal process against the same income.

SECTION 5. AMENDMENT. Subsections 1 and 9 of section 14-09-09.16 of the North Dakota Century Code are amended and reenacted as follows:

1. The ~~clerk of court or the~~ public authority shall serve the income withholding order on the income payer by first-class mail or in any other manner agreed to by the income payer, and upon the obligor by first-class mail to the obligor's last-known address.
9. The income payer shall notify the ~~clerk of court or the~~ public authority in writing of the termination of a duty to pay income to the obligor within seven business days of the termination. The notification must include the name and address of the obligor's subsequent income payer, if known.

SECTION 6. AMENDMENT. Section 14-09-09.17 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.17. Amendment - Termination of income withholding order.

Upon amendment or termination of an income withholding order, the ~~clerk of court or the~~ public authority shall send appropriate notice to the income ~~payer~~ payer. An income withholding order is to be amended by the ~~clerk of the~~ public authority when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order is to be terminated when the duty to support ceases and all child support arrearages have been paid. When two or more income ~~payors~~ payers have been subjected to income withholding orders with respect to a child support obligation, the ~~clerk of the~~ public authority shall suspend the income withholding order directed to one or more income ~~payors~~ payers, provided that the amount of child support withheld by the remaining income ~~payer~~ payer or ~~payors~~ payers equals the amount determined under section 14-09-09.30. The ~~clerk of the~~ public authority shall immediately reinstate any suspended income withholding order should any child support obligation of the obligor thereafter become delinquent. The ~~clerk of the~~ public authority shall provide a copy of the reinstated income withholding order, by first-class mail, to the obligor and the income ~~payer~~ payer.

SECTION 7. AMENDMENT. Section 14-09-09.30 of the North Dakota Century Code is amended and reenacted as follows:

14-09-09.30. Monthly amount due. The total amount of child support due in each month is ~~the sum of:~~

1. ~~The~~ If there is a current monthly support obligation, the sum of the obligor's current monthly support obligation; and
- ~~2.~~ a. The amount the obligor is ordered to pay toward any outstanding arrearage; or
 - b. If no order to repay an arrearage exists, an amount for application to any arrearage; ~~subject to the limitations of section 14-09-09.16,~~ equal to:
 - ~~(1)~~ Twenty twenty percent of the obligor's current monthly support obligation; or
- ~~(2)~~ 2. If there is no current monthly support obligation, ~~the most recent monthly support obligation.~~

- a. An amount equal to the greater of:
 - (1) The amount the obligor is ordered to pay toward any outstanding arrearage; or
 - (2) The sum of the obligor's most recent monthly support obligation and twenty percent of the obligor's most recent monthly support obligation;
- b. An amount the obligor is ordered to pay toward an arrearage during periods when the supported child resides with the obligor pursuant to a court order; or
- c. An amount the obligor is ordered to pay toward an arrearage if that amount is included in an order issued when there is no current monthly support obligation.

SECTION 8. Section 14-09-09.32 of the North Dakota Century Code is created and enacted as follows:

14-09-09.32. Agreements to waive child support. An agreement purporting to relieve an obligor of any current or future duty of child support is void and may not be enforced. An agreement purporting to waive past-due child support is void and may not be enforced unless the child support obligee and any assignee of the obligee have consented to the agreement in writing and the agreement has been approved by a court of competent jurisdiction. A copy of the order of approval must be provided to the state disbursement unit. As used in this section, "child support" does not include spousal support.

SECTION 9. Section 14-09-09.33 of the North Dakota Century Code is created and enacted as follows:

14-09-09.33. Judicial offset 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;
 - 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. 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. 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. 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. As used in this section, "child support" does not include spousal support.

SECTION 10. Section 14-09-09.34 of the North Dakota Century Code is created and enacted as follows:

14-09-09.34. Lump sum payments.

1. An income payer who has been served with an income withholding order issued under section 14-09-09.15 for an obligor which includes an amount for past-due support shall notify the public authority before making any lump sum payment of one thousand dollars or more to the obligor. "Lump sum payment" includes pay in lieu of vacation or other leave, bonus, commission, and any other payment to an obligor but does not include periodic payments made on regular paydays as compensation for services and does not include reimbursement for expenses incurred by the obligor on behalf of the income payer.
2. An income payer who provides notice of a lump sum payment to the public authority under subsection 1 may not make more than one-half of the payment to the obligor for thirty days from the date of the notice to the public authority or until the income payer receives written authorization from the public authority to make the lump sum payment to the obligor, whichever occurs first.
3. Notwithstanding subsection 2, an income payer who provides notice of a lump sum payment to the public authority under subsection 1 may not make a lump sum payment to an obligor if the income payer has been notified that an execution, garnishment, attachment, or other process has been initiated regarding the lump sum payment to satisfy a child support obligation of the obligor.
4. An income payer who owes a lump sum payment under this section is subject to the duties and liabilities in section 14-09-09.3 unless the context indicates otherwise.

5. This section does not apply to any portion of a lump sum payment that must be paid to satisfy an income withholding order issued under section 14-09-09.15.

SECTION 11. AMENDMENT. Section 26.1-36.5-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.5-03. Enrollment of children. If a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, the insurer shall:

1. Permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any open enrollment restrictions and subject to the prohibited practices provisions of this chapter;
2. If a parent fails to provide health coverage for any child, enroll the child under family coverage upon application by the child's other parent or by the department of human services; ~~and~~
3. Upon receipt of the national medical support notice issued under section 14-09-08.20 from the employer:
 - a. Comply with the provisions of the national medical support notice;
 - b. Within forty business days of the date of the national medical support notice, take appropriate action pursuant to the notice; and
 - c. Enroll the child, and the obligor if necessary, in the insurer's default plan, if any, if required under subsection 2 of section 14-09-08.20; and
4. Not disenroll or eliminate coverage for any child unless the insurer is provided satisfactory written evidence that:
 - a. The court or administrative order is no longer in effect; or
 - b. The child is or will be enrolled with comparable coverage that will take effect no later than the effective date of disenrollment.

SECTION 12. A new section to chapter 50-09 of the North Dakota Century Code is created and enacted as follows:

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 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 13. DEPARTMENT OF HUMAN SERVICES - FUNDING FOR CHILD SUPPORT ENFORCEMENT SERVICES - REPORT TO FIFTY-NINTH LEGISLATIVE ASSEMBLY. The department of human services shall prepare and present a report to the appropriations committees of the fifty-ninth legislative assembly on the department's use of any funds appropriated to the department

under section 12 of this Act during the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 14. EFFECTIVE DATE. Section 7 of this Act applies to all child support obligations that exist on or after January 1, 2005.

SECTION 15. EXPIRATION DATE. Section 12 of this Act is effective through June 30, 2005, and after that date is ineffective.

Approved April 18, 2003
Filed April 18, 2003

CHAPTER 126

HOUSE BILL NO. 1035

(Legislative Council)
(Family Law Committee)

REVISED UNIFORM ADOPTION ACT

AN ACT to amend and reenact section 14-15-01, subdivision a of subsection 4 of section 14-15-03, subsection 3 of section 14-15-04, subsection 1 of section 14-15-05, sections 14-15-06 and 14-15-07, subsection 2 of section 14-15-08, sections 14-15-09, 14-15-10, 14-15-11, 14-15-12, 14-15-12.1, 14-15-13, and 14-15-14, subsection 2 of section 14-15-15, and sections 14-15-16, 14-15-17, 14-15-18, 14-15-19, and 14-15-20 of the North Dakota Century Code, relating to the Revised Uniform Adoption Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-15-01 of the North Dakota Century Code is amended and reenacted as follows:

14-15-01. Definitions. As used in this chapter, unless the context otherwise requires:

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 to:

(1) Communicate with the child; or

(2) Provide for the care and support of the child as required by law.

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. "Adult" means an individual who is not a minor.

~~2.~~ 3. "Agency" means any person certified, licensed, or otherwise specially empowered by law or rule an entity licensed under chapter 50-12 to place minors for adoption.

~~3.~~ 4. "Child" means a son or daughter, whether by birth or adoption.

- 4- 5. "Court" means the district court of this state, and when the context requires means the court of any other state empowered to grant petitions for adoption.
6. "Department" means the department of human services.
- ~~5-~~ 7. "Genetic parent" means the ~~natural~~ biological mother or adjudicated mother of the adopted child, or the presumed father or adjudicated father of the adopted child under chapter 14-17.
8. "Genetic sibling" means individuals with genetic relationship of sister, brother, half-sister, or half-brother.
9. "Identifying" includes full name, address, date of birth, telephone number, or anything that may lead to the identity of any previously undisclosed individual.
10. "Investigation" includes information obtained regarding the child's history, a preplacement adoption assessment of the prospective adoptive family, and an evaluation of the child's placement in the adoptive home.
- ~~6-~~ 11. "Minor" means an individual under the age of eighteen years.
- ~~7-~~ 12. "Nonidentifying adoptive information" means:
- a. Age of genetic parent in years at the birth of the adopted child.
 - b. Heritage of genetic parent.
 - c. Educational attainments, including the number of years of school completed by genetic parent at the time of birth of the adopted child.
 - d. General physical appearance of genetic parent at the time of birth of the adopted child, including the height, weight, color of hair, eyes, skin, and other information of a similar nature.
 - e. Talents, hobbies, and special interests of genetic parents.
 - f. Existence of any other children born to either genetic parent ~~before the birth of the adopted child~~.
 - g. Reasons for child being placed for adoption or for termination of parental right.
 - h. Religion of genetic parent.
 - i. Vocation of genetic parent in general terms.
 - j. Health history of genetic parents and blood relatives in a manner prescribed by the department of ~~human services~~.
 - k. Such further information which, in the judgment of the agency, will not be detrimental to the adoptive parent or the adopted ~~person~~

individual requesting the information, but the additional information ~~must~~ may not identify genetic parents by name or location.

8. ~~"Person" means an individual, corporation, limited liability company, governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.~~
13. "Relative" means any individual having the following relationship to the minor by marriage, blood, or adoption: brother, sister, stepbrother, stepsister, uncle, aunt, or grandparent.
14. "Stepparent" means an individual who is married to a parent of a child who has not adopted the child.

SECTION 2. AMENDMENT. Subdivision a of subsection 4 of section 14-15-03 of the North Dakota Century Code is amended and reenacted as follows:

- a. ~~The other spouse is a parent of the individual to be adopted and consents to the adoption. The petitioner is a stepparent of the individual to be adopted and the biological or legal parent of the individual to be adopted consents;~~

SECTION 3. AMENDMENT. Subsection 3 of section 14-15-04 of the North Dakota Century Code is amended and reenacted as follows:

3. The caption of a petition for adoption must be styled substantially "In the Matter of the Adoption of _____". ~~The person~~ individual to be adopted must be designated in the caption under the name by which that ~~person~~ individual is to be known if the petition is granted. If the child is placed for adoption by an agency, any name by which the child was previously known may not be disclosed in the petition, the notice of hearing, or in the decree of adoption.

SECTION 4. AMENDMENT. Subsection 1 of section 14-15-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Unless consent is not required under section 14-15-06, a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:
 - a. The mother of the minor whether by birth or adoption;
 - b. The father of the minor, if:
 - (1) The minor is the father's child by adoption, or the father has otherwise legitimated the minor according to the laws of the place in which the adoption proceeding is brought; or
 - (2) The person is presumed to be the ~~natural~~ biological father of the minor under subsection 1 of section 14-17-04, provided the nonexistence of the father and child relationship between them has not been judicially determined;
 - c. Any ~~person~~ individual lawfully entitled to custody of the minor or empowered to consent;

- d. The court having jurisdiction to determine custody of the minor, if the legal guardian or custodian of the ~~person of the~~ minor is not empowered to consent to the adoption;
- e. The minor, if more than ten years of age, unless the court in the best interest of the minor dispenses with the minor's consent; and
- f. The spouse of the minor to be adopted.

SECTION 5. AMENDMENT. Section 14-15-06 of the North Dakota Century Code is amended and reenacted as follows:

14-15-06. ~~Persons~~ Individuals as to whom consent not required - Notice of hearing.

1. Consent to adoption is not required of:
 - a. A parent who has deserted a child without affording means of identification or who has abandoned a child.
 - b. A parent of a child in the custody of another, if the parent for a period of at least one year has failed 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 judicial decree.
 - c. The father of a minor if the father's consent is not required by subdivision b of subsection 1 of section 14-15-05.
 - d. A parent who has relinquished that parent's right to consent under section 14-15-19.
 - e. A parent whose parental rights have been terminated by order of court under section 14-15-19.
 - f. A parent judicially declared incompetent or mentally defective if the court dispenses with the parent's consent.
 - g. Any parent of the individual to be adopted, if the individual is an adult.
 - h. Any legal guardian or lawful custodian of the individual to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty days or who, after examination of the guardian's or custodian's written reasons for withholding consent, is found by the court to be withholding consent unreasonably.
 - i. The spouse of the individual to be adopted, if the failure of the spouse to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

- j. A parent of the minor, if the failure of the parent to consent is excused by the court in the best interest of the child by reason of the parent's prolonged unexplained absence, unavailability, incapacity, or significant failure, without justifiable cause, to establish a substantial relationship with the minor or to manifest a significant parental interest in the minor, or by reason of inability of the court to identify the parent.
2. Except as provided in section 14-15-11, notice of hearing on a petition for adoption need not be given to a ~~person~~ an individual whose consent is not required or to a ~~person~~ an individual whose consent or relinquishment has been filed with the petition.

SECTION 6. AMENDMENT. Section 14-15-07 of the North Dakota Century Code is amended and reenacted as follows:

14-15-07. How consent is executed.

4. The required consent to adoption must be executed at any time after the birth of the child and in the manner following:
 - a. 1. If by the individual to be adopted, in the presence of the court.
 - b. 2. If by an agency, by the executive head or other authorized representative, in the presence of a ~~person~~ an individual authorized to take acknowledgments.
 - e. 3. If by any other ~~person~~ individual, in the presence of the court or in the presence of a ~~person~~ an individual authorized to take acknowledgments.
 - d. 4. If by a court, by appropriate order or certificate.
2. ~~A consent which does not name or otherwise identify the adopting parent is valid if the consent contains a statement by the person whose consent it is that the person consenting voluntarily executed the consent irrespective of disclosure of the name or other identification of the adopting parent.~~

SECTION 7. AMENDMENT. Subsection 2 of section 14-15-08 of the North Dakota Century Code is amended and reenacted as follows:

2. A consent to adoption may be withdrawn ~~prior to~~ before the entry of a decree of adoption if the court finds, after notice and opportunity to be heard is afforded to petitioner, the ~~person~~ individual seeking the withdrawal, and the agency placing a child for adoption, that the withdrawal is in the best interest of the individual to be adopted and the court orders the withdrawal.

SECTION 8. AMENDMENT. Section 14-15-09 of the North Dakota Century Code is amended and reenacted as follows:

14-15-09. Petition for adoption.

1. A petition for adoption must be signed and verified by the petitioner, filed with the clerk of the court, and state:

- a. The date and place of birth of the individual to be adopted, if known.
- b. The name to be used for the individual to be adopted.
- c. The date petitioner acquired custody or date of placement of the minor and the name of the ~~person~~ individual placing the minor.
- d. The full name, age, place, and duration of residence of the petitioner.
- e. The marital status of the petitioner, including the date and place of marriage, if married.
- f. That the petitioner has facilities and resources, including those available under a subsidy agreement, suitable to provide for the nurture and care of the minor to be adopted, and that it is the desire of the petitioner to establish the relationship of parent and child with the individual to be adopted.
- g. A description and estimate of value of any property of the individual to be adopted.
- h. The name of any ~~person~~ individual whose consent to the adoption is required, but who has not consented, and facts or circumstances which excuse the lack of the ~~person's~~ individual's consent normally required to the adoption.
- i. The department of ~~human services~~ or a county social service board as respondent.
- j. That the petitioner's expenses were reasonable as verified by the court. Reasonable fees may be charged for professional services and living expenses if reflected in a report of agreements and disbursements filed under this chapter and approved by the court. The fees may not be contingent upon placement of the child for adoption, consent to adoption, or cooperation in the completion of adoption. Reasonable fees may include:
 - (1) Preplacement counseling, adoption assessment, placement of the child, foster care, or other preadoption services, which must be paid directly to the provider of the services;
 - (2) Legal fees relating to the petition for relinquishment or adoption, that must be paid directly to the provider of the services;
 - (3) Medical expenses relating to prenatal care and the birth of the child, that are not already covered by health insurance;
 - (4) Expenses for transportation, meals, and lodging incurred for placement of the child or in order to receive counseling, legal, or medical services related to the pregnancy, birth, or placement; and

- (5) Living expenses of the birth mother which are needed to maintain an adequate standard of living, which the birth mother is unable to otherwise maintain because of loss of income or other support resulting from the pregnancy.

 - (a) The payments may cover expenses incurred during the pregnancy-related incapacity but not for a period longer than six weeks following the delivery, unless the court determines within the six-week period that the birth mother is unable to be employed due to physical limitations relating to the birth of the child.
 - (b) Living expenses do not include expenses for lost wages, gifts, educational expenses, vacations, or other similar expenses of a birth mother.
2. A certified copy of the birth certificate or verification of birth record of the individual to be adopted, if available, and the required consents and relinquishments must be filed with the clerk.
3. Any ~~person~~ individual filing a petition shall pay to the clerk of court a filing fee as prescribed in subsection 1 of section 27-05.2-03.

SECTION 9. AMENDMENT. Section 14-15-10 of the North Dakota Century Code is amended and reenacted as follows:

14-15-10. Report of petitioner's expenditures.

1. Except as specified in subsection 2, the petitioner in any proceeding for the adoption of a minor shall file, before the petition is heard, a full accounting report in a manner acceptable to the court of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. Fees may not be contingent upon placement of the child for adoption, consent to adoption, or cooperation in the completion of adoption. The report must show any expenses incurred in connection with:

 - a. ~~The birth of the minor~~ Preplacement counseling, adoption assessment, placement of the child, foster care, or other preadoption services, that must be paid directly to the provider of the services;
 - b. ~~Placement of the minor with petitioner~~ Legal fees relating to the petition for relinquishment or adoption, that must be paid directly to the provider of the services;
 - c. ~~Medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement~~ expenses relating to prenatal care and the birth of the child, that are not already covered by health insurance; and
 - d. ~~Services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner, either natural parent of the minor, or any other person~~ Expenses for transportation, meals, and lodging incurred for placement of the

child or in order to receive counseling, legal, or medical services related to the pregnancy, birth, or placement; and

- e. Living expenses of the birth mother which are needed to maintain an adequate standard of living, which the birth mother is unable to otherwise maintain because of loss of income or other support resulting from the pregnancy.
- (1) Payments may cover expenses incurred during the pregnancy-related incapacity but not for a period longer than six weeks following the delivery, unless the court determines within the six-week period that the birth mother is unable to be employed due to physical limitations relating to the birth of the child.
- (2) Living expenses do not include expenses for lost wages, gifts, educational expenses, vacations, or other similar expenses of a birth mother.
2. This section does not apply to an adoption by a stepparent whose spouse is a ~~natural~~ biological or adoptive parent of the child.
3. Any report made under this section must be signed and verified by the petitioner.

SECTION 10. AMENDMENT. Section 14-15-11 of the North Dakota Century Code is amended and reenacted as follows:

14-15-11. Notice of petition - Investigation and hearing.

1. a. After the filing of a petition to adopt a minor, the court shall fix a time and place for hearing the petition. At least twenty days before the date of hearing, notice of the filing of the petition and of the time and place of hearing must be given by the petitioner to the department of ~~human services~~; any agency or ~~person~~ individual whose consent to the adoption is required by this chapter but who has not consented; a ~~person~~ an individual whose consent is dispensed with upon any ground mentioned in subdivisions a, b, f, h, i, and j of subsection 1 of section 14-15-06 but who has not consented; and any ~~person~~ individual identified by the court as a ~~natural biological~~ parent or a possible ~~natural biological~~ parent of the minor, upon making inquiry to the extent necessary and appropriate, as in proceedings under sections 27-20-45 and 14-17-24, unless the ~~person~~ individual has relinquished parental rights or the ~~person's~~ individual's parental rights have been previously terminated by a court. The notice to the department of ~~human services~~ must be accompanied by a copy of the petition.
- b. Notice of the filing of a petition to adopt an adult must be given by the petitioner at least twenty days before the date of the hearing to each living parent of the adult to be adopted.
2. An investigation must be made by a licensed child-placing agency to inquire into the conditions and antecedents of a minor sought to be adopted and of the petitioner for the purpose of ascertaining whether the

adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor.

3. A written report of the investigation must be filed with the court by the investigator before the petition is heard.
4. The report of the investigation must contain ~~an evaluation of the placement,~~ a review of the child's history; a preplacement adoption assessment of the petitioner, including a criminal history record investigation of the petitioner;; and a postplacement evaluation of the placement with a recommendation as to the granting of the petition for adoption and any other information the court requires regarding the petitioner or the minor.
5. An investigation and report is not required in cases in which a stepparent is the petitioner or the ~~person~~ individual to be adopted is an adult. The department of ~~human services,~~ when required to consent to the adoption, may give consent without making the investigation. If the petitioner is a relative other than a stepparent of the minor, the minor has lived with the petitioner for at least nine months, no allegations of abuse or neglect have been filed against the petitioner or any member of the petitioner's household, and the court is satisfied that the proposed adoptive home is appropriate for the minor, the court may waive the investigation and report required under this section. ~~For the purpose of this section, "relative" means any person having the following relationship to the minor by marriage, blood, or adoption: grandparent, brother, sister, stepbrother, stepsister, uncle, or aunt.~~
6. The department of ~~human services,~~ when required to consent to the adoption, may request the licensed child-placing agency to ~~make investigations of designated portions of the inquiry as may be appropriate and to make a written report thereof as a supplemental report to the court~~ conduct further investigation and to make a written report thereof as a supplemental report to the court.
7. After the filing of a petition to adopt an adult, the court by order shall direct that a copy of the petition and a notice of the time and place of the hearing be given to any ~~person~~ individual whose consent to the adoption is required but who has not consented and to each living parent of the adult to be adopted. The court may order an appropriate investigation to assist it in determining whether the adoption is in the best interest of the ~~persons~~ individuals involved.
8. Notice must be given in the manner appropriate under rules of civil procedure for the service of process in a civil action in this state or in any manner the court by order directs. Proof of the giving of the notice must be filed with the court before the petition is heard.

SECTION 11. AMENDMENT. Section 14-15-12 of the North Dakota Century Code is amended and reenacted as follows:

14-15-12. Required residence of minor. A final decree of adoption may not be issued and an interlocutory decree of adoption does not become final, until the minor to be adopted, other than a stepchild of the petitioner, has lived in the adoptive home ~~for~~:

1. For at least six months after placement by an agency;
2. For six months after placement by a parent in accordance with an identified relinquishment under chapter 14-15.1;
3. As a foster child for at least six months and has been placed for adoption by an agency; or for
4. For at least six months after the department of human services or the court has been informed of the custody of the minor by the petitioner, and the department of human services or court has had an opportunity to observe or investigate the adoptive home.

SECTION 12. AMENDMENT. Section 14-15-12.1 of the North Dakota Century Code is amended and reenacted as follows:

14-15-12.1. Health insurance requirements for adoptees. The department of human services, county social service board, or child-placing agency involved in an adoption proceeding action may at any time prior to before a final decree of adoption, if legal custody of the person individual to be adopted is not held by the department, a county social service board, a child-placing agency, or an equivalent office or agency outside the state, require the petitioner for the adoption of another person individual to show proof that a health insurance policy is in effect which provides coverage for the person individual to be adopted. If proof of health insurance coverage is submitted by the petitioner, no further bond of any kind may be required by the department or a county social service board in regard to health coverage of the person individual to be adopted.

SECTION 13. AMENDMENT. Section 14-15-13 of the North Dakota Century Code is amended and reenacted as follows:

14-15-13. Appearance - Continuance - Disposition of petition.

1. The petitioner and the individual to be adopted shall appear at the hearing on the petition, unless the presence of either is excused by the court for good cause shown.
2. The court may continue the hearing from time to time to permit further observation, investigation, or consideration of any facts or circumstances affecting the granting of the petition.
3. If at the conclusion of the hearing, the court determines that the required consents have been obtained and that the adoption is in the best interest of the individual to be adopted, the court may (a) issue:
 - a. Issue a final decree of adoption; or ~~(b) issue~~
 - b. Issue an interlocutory decree of adoption, which by its own terms automatically becomes a final decree of adoption on a day specified in the decree, ~~which that~~ day may not be less than six months nor more than one year after the minor was placed in the adoptive home by an agency or after the department of human services or court was informed of the custody of the minor by the petitioner, unless sooner vacated by the court for good cause shown. In an interlocutory decree of adoption, the court shall

provide for observation, investigation, and further report on the adoptive home during the interlocutory period.

4. If the requirements for a decree under subsection 3 have not been met, the court shall dismiss the petition and determine the person to have custody of the minor, including the petitioners if in the best interest of the minor. In an interlocutory decree of adoption the court may provide for observation, investigation, and further report on the adoptive home during the interlocutory period. The court shall make a finding as to the reasonableness of expenses reported under section 14-15-10.
5. If the requirements for a decree under subsection 3 have not been met, the court shall dismiss the petition and determine the individual to have custody of the minor, including the petitioners if in the best interest of the minor.

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

14-15-14. Effect of petition and decree of adoption.

1. A final decree of adoption and an interlocutory decree of adoption which has become final, whether issued by a court of this state or of any other place, have the following effect as to matters within the jurisdiction or before a court of this state:
 - a. Except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the ~~natural~~ biological parents of the adopted individual of all parental rights and responsibilities, and to terminate all legal relationships between the adopted individual and the individual's relatives, including the individual's ~~natural~~ biological parents, so that the adopted individual thereafter is a stranger to the individual's former relatives for all purposes including inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, ~~which~~ that do not expressly include the individual by name or by some designation not based on a parent and child or blood relationship; and
 - b. To create the relationship of parent and child between petitioner and the adopted individual, as if the adopted individual were a legitimate blood descendant of the petitioner, for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted individual from their operation or effect.
2. Notwithstanding the provisions of subsection 1, if a parent of a child dies without the relationship of parent and child having been previously terminated and a spouse of the living parent thereafter adopts the child, the child's right of inheritance from or through the deceased parent is unaffected by the adoption.
3. An interlocutory decree of adoption, while it is in force, has the same legal effect as a final decree of adoption. If an interlocutory decree of adoption is vacated, it must be as though void from its issuance, and the

rights, liabilities, and status of all affected ~~persons~~ individuals which have not become vested must be governed accordingly.

SECTION 15. AMENDMENT. Subsection 2 of section 14-15-15 of the North Dakota Century Code is amended and reenacted as follows:

2. Subject to the disposition of an appeal, upon the expiration of one year after an adoption decree is issued the decree cannot be questioned by any ~~person~~ individual, including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless, in the case of the adoption of a minor the petitioner has not taken custody of the minor; ~~or, in the case of the adoption of an adult, the adult had no knowledge of the decree within the one-year period.~~

SECTION 16. AMENDMENT. Section 14-15-16 of the North Dakota Century Code is amended and reenacted as follows:

14-15-16. Hearings and records in adoption proceedings - Confidential nature - Disclosure of identifying and nonidentifying information - Retroactive operation.

1. The provisions of this section supersede any other law regarding public hearings and records.
2. For purposes of this section:
 - a. ~~"Department" means the department of human services.~~
 - b. "Genetic parent" includes a man presumed or adjudicated to be the adopted ~~person's~~ individual's father under chapter 14-17 and an alleged father when so indicated in the files of the child-placing agency or the department, but only if there exists in those files information that corroborates the allegation of paternity, including the existence of communications between the alleged father and the child-placing agency, or between the alleged father and the genetic mother or members of her family, or such other corroborative information as may be permitted by rules adopted by the department.
 - c. ~~"Genetic sibling" means persons with the genetic relationship of sister, brother, half-sister, or half-brother.~~
 - b. "Notify" means to make a personal and confidential contact with the individual to whom a disclosure of identifying information has been requested. The personal and confidential contact must be made by an employee or agent of the child-placing agency that processed the adoption or by some other licensed child-placing agency designated by the individual initiating the search.
3. All hearings held in ~~proceedings~~ actions under this chapter must be held in closed court without admittance of any ~~person~~ individual other than essential officers of the court, the parties, their witnesses, counsel, ~~persons~~ individuals who have not previously consented to the adoption but are required to consent, the parents of an adult to be adopted, and representatives of the agencies present to perform their official duties.

Upon a showing of good cause by the petitioner, the court may prohibit the parents of an adult to be adopted from attending the adoption hearings and proceedings. A parent of an adult to be adopted who is prohibited by the court from attending the proceedings may submit relevant testimony or information regarding the petition to the court in writing.

4. All papers;~~;~~ records;~~;~~ and ~~information pertaining to the adoption identifying and nonidentifying information relating to an adopted individual, birth siblings, birth parents, or adoptive parents,~~ whether part of the permanent record of the court or of a file in the department or in an agency are confidential and may be disclosed only in accordance with this section. Papers, records, and information directly pertaining to the adoption must be kept permanently by the department and agency.
5. Nonidentifying information, if known, concerning undisclosed genetic parents ~~shall~~ must be furnished at a reasonable fee to:
 - a. The adoptive parents at the time of adoptive placement or upon their written request;
 - b. An adopted adult upon written request; or
 - c. A birth parent upon written request.
6. The clerk of the appropriate district court, upon request and payment of the proper fee, shall furnish a certified copy of the decree of adoption to the adoptive parents, the guardian of an adopted minor child, or an adopted adult, provided the decree does not disclose the identity of the genetic parents or the name of the adopted ~~person prior to~~ individual before the adoption proceedings action.
7. ~~At~~ Before the child reaches adulthood, at the discretion of the child-placing agency, with due regard for confidentiality ~~and upon the consent of all the parties involved,~~ exchanges of identifying or nonidentifying information may take place between the genetic parents, adoptive parents, and adopted child ~~as follows:~~
 - a. ~~At the time the child is placed for adoption, the genetic parents and the adoptive parents may meet, in person, without disclosing their names.~~
 - b. ~~The genetic parents and the adoptive parents may exchange correspondence through the child-placing agency.~~
 - c. ~~The child-placing agency may inform the genetic parents of the death of the child they placed for adoption.~~
 - d. ~~The child-placing agency may inform the adopted adult, or the adoptive parents of a minor of the death of a genetic parent.~~
 - e. ~~The child-placing agency may inform the genetic parents of pertinent medical information concerning the adopted child or adult.~~

- f. ~~The child-placing agency may inform the adopted adult or the adoptive parents of a minor of pertinent medical information concerning the genetic parents. Disclosure of a party's identifying information may not occur unless the party consents to disclosure.~~
- b. If one parent objects, the identifying information disclosed by the agency may only relate to the consenting parent or parents.
8. An adopted ~~person~~ individual who is eighteen years of age or older may request the department to initiate the disclosure of information identifying the adopted ~~person's~~ individual's genetic parents or to initiate the disclosure of nonidentifying information not on file with the department or a child-placing agency.
9. An adopted ~~person~~ individual who is eighteen years of age or older may request the department to initiate the disclosure of information identifying the adopted ~~person's~~ individual's adult genetic sibling.
10. A genetic parent of a ~~person~~ an adopted individual, with respect to whom that parent's parental rights were voluntarily terminated, after that ~~person~~ individual has reached twenty-one years of age, may request the department to initiate the disclosure of information identifying that ~~person~~ individual or to initiate the disclosure of nonidentifying information not on file with the department or a child-placing agency.
11. An adult genetic sibling of a ~~person, with respect to whom the parental rights of the sibling's and the person's mutual parent or parents were voluntarily terminated~~ an adopted individual, after that ~~person~~ individual has reached twenty-one years of age, may request the department to initiate disclosure of information identifying that ~~person~~ individual.
12. An adult child of a deceased adopted individual may request the department to initiate the disclosure of information identifying the adopted individual's genetic parents or to initiate the disclosure of nonidentifying information not on file with the department or child-placing agency.
13. An adult child of an adopted individual who is still living may not request the department to initiate disclosure of information identifying the adopted individual's genetic parents or to initiate the disclosure of nonidentifying information not on file with the department or child-placing agency.
14. The department shall, within five working days of receipt of a request under subsection 8, 9, 10, ~~or~~ 12, or 13, notify in writing a child-placing agency having access to the requested information. If the department's records do not identify any child-placing agency having access to the requested information, the department, within five working days after receipt of the request, shall so notify the requester in writing. The requester may designate a child-placing agency from a list of such agencies furnished by the department, ask the department to designate an agency, or terminate the request.
- ~~13.~~ 15. Within ninety days after receiving notice of a request made under subsection 8, 9, 10, ~~or~~ 12, or 13, the child-placing agency shall make complete and reasonable efforts to notify the ~~person~~ individual or

~~persons~~ individuals with respect to which a disclosure of identifying information has been requested. The child-placing agency must certify the results of its efforts to the department within one hundred twenty days after receipt of the request. The child-placing agency may charge a reasonable fee to the requester for the cost of making a search pursuant to the request. All communications under this subsection are confidential. ~~For purposes of this subsection, "notify" means a personal and confidential contact with the person with respect to whom a disclosure of identifying information has been requested. The personal and confidential contact may not be by mail and must be by an employee or agent of the child-placing agency which processed the pertinent adoption, or some other licensed child-placing agency designated by the child-placing agency.~~ If the search is not completed within ninety days, additional time may be requested. Approval of this request must be given by the individual requesting the search.

44. 16. The personal and confidential contact must be evidenced by an affidavit of notification executed by the ~~person~~ individual who notified each genetic parent, adopted ~~person~~ individual, or genetic sibling and certifying that each genetic parent, adopted ~~person~~ individual, or genetic sibling contacted was given the following information:
- a. The nature of the identifying information to which the agency has access.
 - b. The nature of any nonidentifying information requested.
 - c. The date of the request of the adopted ~~person~~ individual, genetic parent, or genetic sibling.
 - d. The right of the genetic parent, adopted ~~person~~ individual, or genetic sibling to file, authorize disclosure, or refuse to authorize disclosure.
 - e. The effect of a failure of the genetic parent, adopted ~~person~~ individual, or genetic sibling to either authorize disclosure or refuse to authorize disclosure.
45. 17. An adopted ~~person~~ individual, genetic parent, or genetic sibling, with respect to whom a disclosure of identifying information has been requested, may authorize disclosure, refuse to authorize disclosure, or take no action. If no action is taken in response to a request, the child-placing agency must treat that as a refusal to authorize disclosure, except that it does not preclude disclosure after the ~~person's~~ individual's death.
18. If the child-placing agency has been able to locate only one genetic parent who authorizes disclosure and the other genetic parent cannot be located, the identifying information must be disclosed to the adopted individual. The information disclosed by the agency may relate only to the consenting parent.
19. If the child-placing agency has located both genetic parents and only one genetic parent authorizes disclosure, the child-placing agency may not disclose identifying information regarding the consenting parties unless there is a court order authorizing the disclosure. Upon

application to the court by the child-placing agency, the court shall issue an order authorizing disclosure of information identifying the consenting parties. The order must include any conditions the court determines sufficient to reasonably ensure the continued nondisclosure of information identifying the objecting genetic parent. Conditions placed on the disclosure may include a sworn statement by the consenting genetic parent to refrain from disclosing to the adopted individual any information identifying the objecting genetic parent.

- 46- 20. The certification of the child-placing agency to the department must include:
- a. A statement of whether it has been able to notify the ~~person~~ individual about whom a disclosure of identifying information was requested and whether a notification was precluded by the death of the ~~person~~ individual.
 - b. If a genetic sibling was to be notified at the request of an adopted ~~person~~ individual, or if an adopted ~~person~~ individual was to be notified at the request of a genetic sibling, a statement of whether either ~~person~~ individual knows the identity of any mutual genetic parent.
 - c. Assurances that:
 - (1) No disclosure of identifying information has been made with respect to any adopted ~~person~~ individual, genetic parent, or genetic sibling who has not authorized the disclosure in writing unless the child-placing agency has verified that the ~~person~~ individual has died leaving no unrevoked written refusal to authorize disclosure.
 - (2) Any disclosure of identifying information that might lawfully be made under this section was made within ten days after the date of receipt of written authorization or the date on which the agency verified that the ~~person~~ individual had died.
 - d. Copies of any written authorization of disclosure or refusal to authorize disclosure.
 - e. A statement that the ~~person~~ individual about whom disclosure of identifying information was requested has neither authorized nor refused to authorize disclosure at the time of the certification.
 - f. The date of each notification.
 - g. A copy of each affidavit of notification.
- 47- ~~If the child-placing agency is unable to notify the genetic parent, adopted person, or genetic sibling within ninety days, the identifying information shall not be disclosed.~~
- 48- ~~If the child-placing agency has been able to locate only one genetic parent who authorizes disclosure and the other genetic parent cannot be located, the identifying information must be disclosed to the adopted~~

~~person. The information disclosed by the agency may relate only to the consenting parent.~~

49. 21. The child-placing agency, acting on the request of an adopted ~~person~~ individual to disclose identifying information about a genetic sibling, or acting on the request of a genetic sibling to disclose identifying information about an adopted ~~person~~ individual, must determine if either ~~person~~ individual knows the identity of a living mutual genetic parent. If either ~~person~~ individual knows the identity of a living mutual genetic parent, no disclosure may be made unless that parent is first notified, in the manner provided for in subsection 13; ~~and authorizes the disclosure.~~ The identifying information released may only relate to the consenting parties.
- ~~20.~~ 22. Upon application to the department by an adult adopted ~~person~~ individual or the parent or guardian of a minor adopted child, the department may investigate or cause to be investigated facts necessary to determine the adopted ~~person's~~ individual's eligibility for enrollment as a member of an Indian tribe.
- a. The department may inquire of any ~~person~~ individual or agency, including a licensed child-placing agency in North Dakota, to assist in the investigation.
 - b. All identifying information obtained by the department shall remain confidential.
 - c. The bureau of Indian affairs or an Indian tribe may be provided sufficient information obtained from the investigation to determine the eligibility of the adopted ~~person~~ individual for enrollment in an Indian tribe. ~~Prior to~~ Before the department's release of information to the bureau of Indian affairs or an Indian tribe, the department ~~will obtain~~ shall request written assurance from the bureau of Indian affairs or an Indian tribe that the information provided will remain confidential, and will not be furnished to any unauthorized ~~person~~ individual or agency.
 - d. The procedure used in contacting the genetic parents of the adopted child ~~shall~~ must be a personal and confidential contact. Any necessary contact ~~shall~~ must be made by an employee or agent of a licensed child-placing agency or the department. The information requested of the genetic parents ~~shall~~ must be limited to that information necessary to make a determination of the adopted ~~person's~~ individual's eligibility for enrollment in an Indian tribe.
 - e. The department or agency may charge a reasonable ~~investigation~~ fee.
- ~~24.~~ 23. ~~No person~~ An individual may not be required to disclose the name or identity of either an adoptive parent or an adopted ~~person~~ individual except:
- a. In accordance with this section;

- b. As authorized in writing by the adoptive parent or the adopted ~~person~~ individual; or
- c. Upon order of the court entered in a proceeding brought under subsection ~~22~~ 24.
- ~~22.~~ 24. An adopted ~~person~~ individual, a genetic parent, a genetic sibling, or a guardian of any of those ~~persons~~ individuals may petition the district court for an order directing the disclosure of identifying information.
- a. The petitioner ~~must~~ shall state that efforts to secure the requested disclosure have been made under this section or are forbidden under this section, that the petitioner has a significant need for the disclosure, and the nature of that need.
- b. The petition ~~must~~ shall name the department and any child-placing agency ~~which~~ that has received a request under subsection 8, 9, 10, ~~or~~ 11, 12, or 13 as respondents.
- c. The respondents must furnish, to the court, for in-camera review, copies of such records as the respondents may possess that contain requested identifying information.
- d. The court may determine if ~~persons~~ individuals about whom the disclosure of identifying information is requested must be furnished notice of the proceeding, and may require that the respondents give notice to those ~~persons~~ individuals. If those persons participate in the proceeding, they must be permitted to do so in a manner, to be determined by the court, which avoids disclosure of identifying information except when disclosure is ordered by the court.
- e. The court may order disclosure only if the petitioner demonstrates that disclosure will not result in any substantial harm to the ~~person~~ individual about whom identifying information is sought. The court may not order the disclosure of identifying information concerning any ~~person~~ individual who objects to that disclosure.
- ~~23.~~ 25. The provisions of this section governing the release of identifying and nonidentifying adoptive information apply to adoptions completed before and after July 1, 1979.
- ~~24.~~ 26. Any child-placing agency discharging in good faith its responsibilities under this section is immune from any liability, civil or criminal, that otherwise might result.
- ~~25.~~ 27. The department shall make such reasonable rules as are necessary to carry out the purposes of this section.

SECTION 17. AMENDMENT. Section 14-15-17 of the North Dakota Century Code is amended and reenacted as follows:

14-15-17. Recognition of foreign decree affecting adoption. 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 ~~without~~ 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.

SECTION 18. 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 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 ~~human services~~ of this state for statistical purposes. In the case of the adoption of a ~~person~~ 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 ~~person~~ 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 19. AMENDMENT. Section 14-15-19 of the North Dakota Century Code is amended and reenacted as follows:

14-15-19. Relinquishment and termination of parent and child relationship.

1. The rights of a parent with reference to a child, including parental right to control the child or to withhold consent to an adoption, may be relinquished and the relationship of parent and child terminated in or ~~prior to~~ before an adoption ~~proceeding~~ action as provided in this section.
2. All rights of a parent with reference to a child, including the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of parent and child terminated by a writing, signed by the parent, regardless of the age of the parent:
 - a. In the presence of a representative of an agency taking custody of the child, whether the agency is within or ~~without~~ outside of the state or in the presence and with the approval of a judge of a court of record within or ~~without~~ outside this state in which the minor was present or in which the parent resided at the time it was signed; ~~which relinquishment may be withdrawn within ten days after it is signed or the child is born, whichever is later; and the relinquishment is invalid unless it states that the parent has this right of withdrawal; or~~
 - b. In any other situation if the petitioner has had custody of the minor for two years, but only if notice of the adoption proceeding has been given to the parent and the court finds, after considering the circumstances of the relinquishment and the long continued custody by the petitioner, that the best interest of the child requires the granting of the adoption.
3. In addition to any other action or proceeding provided by law, the relationship of parent and child may be terminated by a court order issued in connection with an adoption ~~proceeding~~ action under this

chapter on any ground provided by other law for termination of the relationship, and in any event on the ground ~~(a) that~~:

- a. That the minor has been abandoned by the parent, ~~(b) that~~;
 - b. That by reason of the misconduct, faults, or habits of the parent or the repeated and continuous neglect or refusal of the parent, the minor is without proper parental care and control, or subsistence, education, or other care or control necessary for the minor's physical, mental, or emotional health or morals, or, by reason of physical or mental incapacity the parent is unable to provide necessary parental care for the minor, and the court finds that the conditions and causes of the behavior, neglect, or incapacity are irremediable or will not be remedied by the parent, and that by reason thereof the minor is suffering or probably will suffer serious physical, mental, moral, or emotional harm, ~~or (c) that~~; or
 - c. That in the case of a parent not having custody of a minor, the noncustodial parent's consent is being unreasonably withheld contrary to the best interest of the minor.
4. For the purpose of proceeding under this chapter, a decree terminating all rights of a parent with reference to a child or the relationship of parent and child issued by a court of competent jurisdiction in this or any other state dispenses with the consent to adoption proceedings of a parent whose rights or parent and child relationship are terminated by the decree and with any required notice of an adoption ~~proceeding~~ action other than as provided in this section.
 5. A petition for termination of the relationship of parent and child made in connection with an adoption ~~proceeding~~ action may be made by:
 - a. Either parent if termination of the relationship is sought with respect to the other parent;
 - b. The petitioner for adoption, the guardian of the ~~person~~ individual, the legal custodian of the child, or the individual standing in parental relationship to the child;
 - c. An agency; or
 - d. Any other ~~person~~ individual having a legitimate interest in the matter.
 6. Before the petition is heard, notice of the hearing ~~thereon~~ on the petition and opportunity to be heard must be given the parents of the child, the guardian of the ~~person 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 any party.
 7. Notwithstanding the provisions of subsection 2, a relinquishment of parental rights with respect to a child, executed under this section, may be withdrawn by the parent, and a decree of a court terminating the parent and child relationship under this section may be vacated by the court upon motion of the parent, if the child is not on placement for

adoption and the person having custody of the child consents in writing to the withdrawal or vacation of the decree.

SECTION 20. AMENDMENT. Section 14-15-20 of the North Dakota Century Code is amended and reenacted as follows:

14-15-20. Adoption and legitimation by conduct. Notwithstanding the other provisions of this chapter, the biological father of an illegitimate minor adopts and legitimates a minor by publicly acknowledging the minor as that ~~person's~~ man's child, receiving the minor into that ~~person's~~ man's home, with the consent of that ~~person's~~ man's wife, if that ~~person~~ man is married, and otherwise treating the minor as if the minor were legitimate. Thereafter, the minor is deemed the legitimate child of the father for all purposes from the time of birth of the minor, the same as if the adoption had been finally decreed pursuant to this chapter.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 127

HOUSE BILL NO. 1036

(Legislative Council)
(Family Law Committee)

ADOPTION

AN ACT to amend and reenact subsections 1 and 4 of section 14-15.1-03 and sections 14-15.1-04, 14-15.1-06, and 14-15.1-07 of the North Dakota Century Code, relating to child relinquishment to identified adoptive parents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 4 of section 14-15.1-03 of the North Dakota Century Code are amended and reenacted as follows:

1. The court shall set a time and place for a hearing on the petition for relinquishment. A guardian ad litem must be appointed for the child at least seven days prior to the hearing. The hearing may not be held sooner than forty-eight hours after the child's birth or the signing of all necessary consents to adoption, whichever is later. If a ~~preplacement~~ report of a child-placing agency is filed with the petition pursuant to section 14-15.1-04, the court may enter a temporary order placing the child with the identified adoptive parent pending the hearing.

4. If the court approves the petition and determines, based upon the ~~preplacement study~~ report of the child-placing agency and other evidence presented at the hearing, that placement with the identified adoptive parent is in the best interests of the child, the court shall ~~order that the child be placed with the identified adoptive parent pending adoption.~~ The identified adoptive parent is financially responsible for the support of the child until further order of the court. The court shall also enter an order terminating the relationship of the birth parent and the child:
 - a. Enter an order terminating the relationship of the birth parent and the child;
 - b. Order that the child be placed with the identified adoptive parent pending adoption;
 - c. Order supervision by a child-placing agency until the adoption is finalized;
 - d. Order the identified adoptive parent financially responsible for the support of the child until further order of the court; and
 - e. Make a finding regarding the reasonableness of expenses reported under section 14-15.1-05.

SECTION 2. AMENDMENT. Section 14-15.1-04 of the North Dakota Century Code is amended and reenacted as follows:

14-15.1-04. Report of child-placing agency. ~~Prior to~~ Before a hearing under this chapter, the ~~preplacement adoptive home study~~ report of a child-placing agency must be filed with the court. The child-placing agency shall serve a copy of the report upon the birth parent, the identified adoptive parent, the guardian ad litem, and the department at least seven days ~~prior to~~ before the hearing. The report must include the following:

1. A recommendation as to whether the home of the identified adoptive parent is a suitable home for the placement of the child.
2. ~~A~~ A preplacement adoption assessment ~~of~~ indicating how the identified adoptive parent's emotional maturity, finances, health, relationships, criminal history record, and any other relevant factors may affect the identified adoptive parent's ability to accept, care for, and provide the child with an adequate environment in which to mature.
3. The medical and social history of the birth parent, including an assessment regarding the birth parent's understanding and acceptance of the ~~proceedings~~ action.
4. If the child has been born ~~prior to~~ before the filing of the report, a medical and developmental history of the child.

SECTION 3. AMENDMENT. Section 14-15.1-06 of the North Dakota Century Code is amended and reenacted as follows:

14-15.1-06. Fees and charges. Reasonable fees may be charged for professional services ~~relating to the petition for relinquishment, placement of the child, and other pre-adoption services, medical care or services, prenatal costs, foster care, or other reasonable items of cost or expense if reflected in a report of agreements and disbursements filed under this chapter and approved by the court and living expenses if reflected in a report of agreements and disbursements filed under this chapter and approved by the court.~~ The fees may not be contingent upon placement of the child for adoption, consent to adoption, or cooperation in the completion of adoption. "Reasonable fees" may include:

1. Preplacement counseling, adoption assessment, placement of the child, foster care, or other preadoption services, which must be paid directly to the provider of the services;
2. Legal fees relating to the petition for relinquishment or adoption, which must be paid directly to the provider of the services;
3. Medical expenses relating to prenatal care and the birth of the child, which are not already covered by health insurance;
4. Expenses for transportation, meals, and lodging incurred for placement of the child or in order to receive counseling, legal, or medical services related to the pregnancy, birth, or placement; and
5. Living expenses of the birth mother which are needed to maintain an adequate standard of living, which the birth mother is unable to otherwise maintain because of loss of income or other support resulting from pregnancy. Payments may cover expenses incurred during the pregnancy related incapacity but not for a period longer than six weeks following the delivery unless the court determines within the six-week

period that the birth mother is unable to be employed due to physical limitations relating to the birth of the child. Living expenses do not include expenses for lost wages, gifts, educational expenses, vacations, or other similar expenses of a birth mother.

SECTION 4. AMENDMENT. Section 14-15.1-07 of the North Dakota Century Code is amended and reenacted as follows:

14-15.1-07. Adoption petition - Time limit for filing.

1. Within ~~ninety~~ one hundred eighty days after entry of an order for relinquishment under this chapter, the identified adoptive parent shall file a petition for adoption under chapter 14-15 or the statutes of the adopting parent's state of residence. A copy of the petition to adopt must be filed with the department. Reports relating to postplacement supervision must be filed with the court hearing the adoption. The resulting decree of adoption, if so ordered by the court, must be filed with the department.

2. If no petition for adoption is filed within ~~ninety~~ one hundred eighty days, the department shall notify the court. The court shall then set a hearing to determine whether the child's placement should be changed.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 128

SENATE BILL NO. 2034

(Legislative Council)
(Family Law Committee)

UNIFORM PARENTAGE ACT REVISIONS

AN ACT to amend and reenact sections 14-17-01 and 14-17-03, subsection 1 of section 14-17-04, subsection 1 of section 14-17-05, and sections 14-17-08 and 14-17-24 of the North Dakota Century Code, relating to the Uniform Parentage Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-17-01 of the North Dakota Century Code is amended and reenacted as follows:

14-17-01. Parent and child relationship defined. As used in this chapter, "parent and child relationship" means the legal relationship existing between a child and the child's ~~natural~~ biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

SECTION 2. AMENDMENT. Section 14-17-03 of the North Dakota Century Code is amended and reenacted as follows:

14-17-03. How parent and child relationship established. The parent and child relationship between a child and:

1. The ~~natural~~ biological mother may be established by proof of having given birth to the child, or under this chapter.
2. The ~~natural~~ biological father may be established under this chapter.
3. An adoptive parent may be established by proof of adoption under ~~the Revised Uniform Adoption Act~~ chapter 14-15.

SECTION 3. AMENDMENT. Subsection 1 of section 14-17-04 of the North Dakota Century Code is amended and reenacted as follows:

1. A man is presumed to be the ~~natural~~ biological father of a child if:
 - a. The man and the child's ~~natural~~ biological mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;
 - b. Before the child's birth, that man and the child's ~~natural~~ biological mother have 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) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred days after its termination by death, annulment, declaration of invalidity, or divorce; or
 - (2) If the attempted marriage is invalid without a court order, the child is born within three hundred days after the termination of cohabitation;
- c. After the child's birth, that man and the child's ~~natural~~ biological 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) The man has acknowledged the man's paternity of the child in writing filed with the division of vital statistics of the state department of health;
 - (2) With the man's consent, that man is named as the child's father on the child's birth certificate; or
 - (3) The man is obligated to support the child under a written voluntary promise or by court order;
- d. While the child is under the age of majority, the man receives the child into the man's home and openly holds out the child as the man's ~~natural~~ biological child;
- e. The man acknowledges the man's paternity of the child in a writing filed with the division of vital statistics of the state department of health, which shall promptly inform the mother of the filing of the acknowledgment, and the mother does not dispute the acknowledgment within a reasonable time after being informed ~~thereof~~ of the acknowledgment, in a writing filed with the division of vital statistics of the state department of health. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted; or
- f. If genetic tests show that the man is not excluded and the statistical probability of the man's parentage is ninety-five percent or higher.

SECTION 4. AMENDMENT. Subsection 1 of section 14-17-05 of the North Dakota Century Code is amended and reenacted as follows:

1. A child, the child's ~~natural~~ biological mother, or a man presumed to be the child's father under subdivision a, b, or c of subsection 1 of section 14-17-04, may bring an action:
 - a. At any time for the purpose of declaring the existence of the father and child relationship presumed under subdivision a, b, or c of subsection 1 of section 14-17-04; or
 - b. For the purpose of declaring the nonexistence of the father and child relationship presumed under subdivision a, b, or c of subsection 1 of section 14-17-04 only if the action is brought within

a reasonable time after obtaining knowledge of relevant facts, but in no event later than five years after the child's birth. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if that man has been made a party.

SECTION 5. AMENDMENT. Section 14-17-08 of the North Dakota Century Code is amended and reenacted as follows:

14-17-08. Parties. The child must be made a party to the action. A child who is a minor must be represented by the child's parent whose parentage has been established under section 14-17-03 or a guardian ad litem appointed by the court. The court may appoint the director of the county social service board as guardian ad litem for the child. The ~~natural~~ biological mother, each man presumed to be the father under section 14-17-04, and each man alleged to be the ~~natural~~ biological father, must be made parties or, if not subject to the jurisdiction of the court, must be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

SECTION 6. AMENDMENT. Section 14-17-24 of the North Dakota Century Code is amended and reenacted as follows:

14-17-24. Proceeding to terminate parental rights.

1. If a mother relinquishes or proposes to relinquish for adoption a child who does not have (a) a presumed father under subsection 1 of section 14-17-04, (b) a father whose relationship to the child has been determined by the court, or (c) a father as to whom the child is a legitimate child under ~~prior~~ previous law of this state or under the law of another jurisdiction, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having custody of the child, shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined by a court not to exist.
2. In an effort to identify the ~~natural~~ biological father, the court shall cause inquiry to be made of the mother and any other appropriate person. The inquiry must include the following: whether the mother was married at the time of conception of the child or at any time ~~thereafter~~ after conception; whether the mother was cohabiting with a man at the time of conception or birth of the child; whether the mother has received from any man support payments or promises of support with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared that man's possible paternity of the child.
3. If, after the inquiry, the ~~natural~~ biological father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each must be given notice of the proceeding in accordance with subsection 5. If any of them fails to appear or, if appearing, fails to claim custodial rights, that man's parental rights with reference to the child must be terminated. If the ~~natural~~ biological father, or a man representing himself to be the ~~natural~~ biological father, claims custodial rights, the court shall proceed to determine custodial rights.

4. If, after the inquiry, the court is unable to identify the ~~natural~~ biological father or any possible ~~natural~~ biological father and no person has appeared claiming to be the ~~natural~~ biological father and claiming custodial rights, the court shall enter an order terminating the unknown ~~natural~~ biological father's parental rights with reference to the child. Subject to the disposition of an appeal, upon the expiration of thirty days after an order terminating parental rights is issued under this subsection, the order cannot be questioned by any person, in any manner, or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.
5. Notice of the proceedings must be given to every person identified as the ~~natural~~ biological father or a possible ~~natural~~ biological father in the manner appropriate under the rules of civil procedure for the service of process in a civil action in this state or in any manner the court directs. Proof of giving the notice must be filed with the court before the petition is heard. If no person has been identified as the ~~natural~~ biological father or a possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at times and in places and manner ~~it~~ the court deems appropriate.
6. A termination of parental rights ordered under this section does not terminate the duty of either parent to support the child ~~prior to~~ before the child's adoption unless that duty is specifically terminated by order of the court after notice of a proposed termination or relinquishment is given to the department of human services in the manner appropriate for the service of process in a civil action in this state.

Approved March 7, 2003

Filed March 7, 2003

EDUCATION

CHAPTER 129

HOUSE BILL NO. 1103

(Appropriations Committee)

(At the request of the Board of University and School Lands)

LAND BOARD EXPENSES CONTINUING APPROPRIATION

AN ACT to create and enact a new section to chapter 15-04, a new section to chapter 15-05, and a new section to chapter 15-07 of the North Dakota Century Code, relating to authority for payment of expenses by the board of university and school lands; to amend and reenact sections 15-03-01.2, 15-03-16, 15-04-23, 15-06-22, 15-08-04, and 47-30.1-23 of the North Dakota Century Code, relating to authority for the payment of expenses by the board of university and school lands; to repeal section 15-03-01.3 of the North Dakota Century Code, relating to apportionment of board of university and school lands maintenance fund balances; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-03-01.2 of the North Dakota Century Code is amended and reenacted as follows:

15-03-01.2. Payment of salaries and expenses from maintenance fund - Vouchers and warrants. All administrative salaries and operating expenses of the office of the commissioner of university and school lands must be paid from ~~said~~ the state lands maintenance fund upon itemized vouchers in duplicate, approved by the commissioner, setting forth the accounts covered ~~thereby, duly itemized~~, one copy to be retained in the commissioner's office and the other to be filed with the office of management and budget, and warrants for the payment ~~thereof~~ drawn by ~~said~~ the office of management and budget upon ~~said~~ the fund.

SECTION 2. AMENDMENT. Section 15-03-16 of the North Dakota Century Code is amended and reenacted as follows:

15-03-16. ~~Appropriation~~ Continuing appropriation for investments. There is ~~hereby~~ appropriated annually the sum amounts necessary ~~for the payment of fees for to pay costs related to~~ investments controlled by the board of university and school lands, including investment management fees, trustee fees, consulting fees, ~~appraisal fees, and~~ custodial fees, and the cost of capitalized building repairs and renovations as approved by the board. Each payment must be made from the trust fund for which the investment is made. ~~For the purpose of this section, the term investments includes all unclaimed property held in trust, financial securities, surface lands, and minerals for which the board is responsible.~~

SECTION 3. A new section to chapter 15-04 of the North Dakota Century Code is created and enacted as follows:

Appropriation for land expenses - Continuing appropriation. There is appropriated annually the amounts necessary to pay expenses for trust lands controlled by the board of university and school lands, including appraisal fees, survey costs, surface lease refunds, weed and insect control costs, clean-up costs, capital improvement rent credits, rural fire district reimbursements for fire protection, land rental or land value survey costs, and expenses determined by the board as necessary to manage, preserve, and enhance the value of the trust asset. Each payment must be made from the trust fund for which the land is held.

SECTION 4. 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. 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. 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.

SECTION 5. A new section to chapter 15-05 of the North Dakota Century Code is created and enacted as follows:

Appropriation for lease expenses - Continuing appropriation. There is appropriated annually the amounts necessary to pay expenses for minerals controlled by the board of university and school lands, including appraisal fees, consulting fees, refunds, and expenses determined by the board as necessary to manage, preserve, and enhance the value of the trust asset. Each payment must be made from the trust fund for which the land is held.

SECTION 6. AMENDMENT. Section 15-06-22 of the North Dakota Century Code is amended and reenacted as follows:

15-06-22. Offer to purchase original grant land - Appraisal - Continuing appropriation. When an offer to purchase any particular tract of original grant land has been made to the board of university and school lands, the commissioner shall request the county board of appraisers to appraise such tract. Upon receipt of such request by the county auditor, ~~he~~ the auditor shall immediately notify the members of the county board of appraisers, who shall, within ten days, proceed to view and appraise such tract. There is appropriated annually the amounts necessary to pay all expenses under this section. Each payment must be made from the trust fund for which the land is held.

SECTION 7. A new section to chapter 15-07 of the North Dakota Century Code is created and enacted as follows:

Appropriation for expenses - Continuing appropriation. There is appropriated annually the amounts necessary to pay expenses for trust land controlled by the board of university and school lands, including appraisal fees, survey costs, clean-up or demolition costs, weed and insect control costs, rural fire district reimbursements for fire protection, and expenses determined by the board as necessary to manage, preserve, and enhance the value of the trust asset. Each payment must be made from the trust fund for which the land is held.

SECTION 8. AMENDMENT. Section 15-08-04 of the North Dakota Century Code is amended and reenacted as follows:

15-08-04. Surveys to be made when necessary - Continuing appropriation for expenses. If it appears necessary in order to ascertain the true boundaries of any tract of land or to enable the commissioner of university and school lands to describe or dispose of the same in suitable and convenient lots, the board of university and school lands may order all necessary surveys to be made, and the expenses thereof must be paid out of the state treasury as other incidental expenses of the board are paid. There is appropriated annually the amounts necessary to pay all expenses under this section. Each payment must be made from the trust fund for which the land is held.

SECTION 9. AMENDMENT. Section 47-30.1-23 of the North Dakota Century Code is amended and reenacted as follows:

47-30.1-23. Deposit of funds - Continuing appropriation.

1. Except as otherwise provided by this section, the administrator shall promptly deposit in the state treasury to the credit of the common schools trust fund all funds received under this chapter, including the proceeds from the sale of abandoned property under section 47-30.1-22. ~~The administrator shall retain in a separate trust fund an amount not less than one hundred thousand dollars from which prompt payment of claims duly allowed must be made.~~
2. ~~Before making any deposit to the credit of the common schools trust fund, the administrator may deduct:~~ There is appropriated annually the amounts necessary to pay all expense deductions under this section, including:
 - a. Any costs in connection with the sale of abandoned property;
 - b. Costs of mailing and, publication, and outreach efforts in connection with any abandoned property;
 - c. Reasonable service charges; ~~and~~
 - d. Costs incurred in examining records of holders of property and in collecting the property from those holders;
 - e. Funds for the payment of claims; and
 - f. Funds for the payment of holder refunds.

SECTION 10. REPEAL. Section 15-03-01.3 of the North Dakota Century Code is repealed.

Approved April 14, 2003

Filed April 14, 2003

CHAPTER 130**SENATE BILL NO. 2094**

(Industry, Business and Labor Committee)

(At the request of the Board of University and School Lands)

**BOARD OF UNIVERSITY AND SCHOOL LANDS
SECURITIES**

AN ACT to amend and reenact section 15-03-04 of the North Dakota Century Code, relating to authority to pledge securities for securities lending transactions by the board of university and school lands.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-03-04 of the North Dakota Century Code is amended and reenacted as follows:

15-03-04. Legal investments. Subject to the provisions of section 15-03-05, the board of university and school lands shall apply the prudent investor rule in investing the permanent funds under its control. The "prudent investor rule" means that in making investments the board shall exercise the same judgment and care, under the circumstances then prevailing and limitations of North Dakota and federal law, that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it, not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income. Notwithstanding any investments made before July 1, 1997, the board may not use any funds entrusted to it to purchase, as sole owner, commercial or residential real property in North Dakota without prior approval of the legislative assembly or the budget section of the legislative council. The board may also lend securities held by the permanent funds, including the authority to pledge a security interest in the securities in the possession of a custodian agent. These securities must be collateralized as directed by the board.

Approved March 14, 2003

Filed March 17, 2003

CHAPTER 131**HOUSE BILL NO. 1127**

(Education Committee)

(At the request of the State Board of Higher Education)

**TECHNOLOGY OCCUPATIONS STUDENT LOAN
PROGRAM ELIGIBILITY**

AN ACT to amend and reenact subsection 2 of section 15-10-37 of the North Dakota Century Code, relating to eligibility for the technology occupations student loan program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 15-10-37 of the North Dakota Century Code is amended and reenacted as follows:

2. Students of board-approved colleges may apply for the technology occupations student loan program. To be eligible to receive student loan grants under the program, the applicant:
 - a. Must have graduated from a board-approved college;
 - b. Must have successfully completed the board-approved technology-related courses;
 - c. Must have maintained at least a 3.0 grade point average, based on a 4.0 grading system, at a board-approved college;
 - d. Must have actively participated in a board-approved technology internship with a business in the state;
 - e. Must have a student loan with the Bank of North Dakota or other participating lender;
 - f. Following graduation must be employed in the state in a board-approved technology occupation; and
 - g. Must have met and shall continue to meet any requirements established by rule.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 132**HOUSE BILL NO. 1124**

(Education Committee)

(At the request of the State Board of Higher Education)

HIGHER EDUCATION ROOM AND MEAL FEES

AN ACT to create and enact a new section to chapter 15-10 of the North Dakota Century Code, relating to higher education institution room and meal fees; and to declare an emergency.

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:

Fees - Room and meals - Authorization. An institution of higher education may charge a fee for room and meals when provided by the institution in connection with summer programs at the institution for which high school credit is awarded. If a student or the student's parent or guardian is unable to pay the fee for room and meals, the institution shall waive the fee.

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

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 133**HOUSE BILL NO. 1378**

(Representatives Monson, D. Johnson, Maragos, Nelson, Svedjan)
(Senator Trenbeath)

WIND ENERGY HYDROGEN PRODUCTION STUDY

AN ACT to provide for a study of the generation of electricity from the state's wind resource to produce hydrogen for fuel.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Study of hydrogen production. The state board of higher education shall urge an institution under the board's jurisdiction to conduct a study of the feasibility and desirability of generating electricity from the state's wind energy resource for the purpose of producing hydrogen for fuel.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 134**SENATE BILL NO. 2383**

(Senators Traynor, Nething)

RAMSEY COUNTY LAND CONVEYANCE

AN ACT to authorize the state board of higher education to convey certain land in Ramsey County, North Dakota, to the city of Devils Lake.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**SECTION 1. TRANSFER OF LAND AUTHORIZED.**

1. The state board of higher education for the benefit of lake region state college, formerly known as university of North Dakota - lake region and formerly known as lake region community college, may convey the land described in this subsection to the city of Devils Lake, North Dakota, for the price and on the terms as determined by the state board of higher education. The land to be conveyed is described as follows:

A parcel of land situated in the E1/2 of the W1/2 of Section 27, Township 154 North, Range 64 West of the 5th principal meridian, Ramsey County, North Dakota, being more particularly described as follows: All that portion of said section 27 lying west of the east line of the W1/2 of said Section 27 and east of the easterly right of way line of the Burlington Northern Railroad. Said parcel is approximately 8 feet in width and 2,900 feet in length. Said parcel contains 26,303 square feet, more or less.

2. 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 21, 2003

Filed March 21, 2003

CHAPTER 135**HOUSE BILL NO. 1393**

(Representative Svedjan)
(Senator Holmberg)

RALPH ENGELSTAD ARENA

AN ACT to create and enact a new section to chapter 15-11 of the North Dakota Century Code, relating to the naming of the Ralph Engelstad arena.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-11 of the North Dakota Century Code is created and enacted as follows:

Ralph Engelstad arena. The hockey arena constructed on the campus of the university of North Dakota with funds donated by Ralph and Betty Engelstad is officially named the Ralph Engelstad arena.

Approved March 15, 2003
Filed March 17, 2003

CHAPTER 136

SENATE BILL NO. 2334

(Senators Bowman, O'Connell, Stenehjem)
(Representatives Berg, Boucher)

BEEF SYSTEMS CENTER OF EXCELLENCE

AN ACT to provide for a beef systems center of excellence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. BEEF SYSTEMS CENTER OF EXCELLENCE.

1. North Dakota state university may establish a beef systems center of excellence in the department of animal and range science. The beef systems center of excellence may:
 - a. Create a model for the development of an integrated meat processing industry;
 - b. Enhance North Dakota state university's ability to provide research related to:
 - (1) The effects of genetics, management, and nutrition regimens on carcass yield, quality, and sensory characteristics;
 - (2) Food safety and nutrition of the resulting meat products;
 - (3) New and emerging technologies in slaughter, fabrication, processing and value-added products; and
 - (4) Meat and meat product marketing; and
 - c. Provide training, education, and outreach opportunities to students, businesses, and beef cattle producers.
2. North Dakota state university may accept gifts, grants, and donations from public and nonpublic sources to support and benefit the creation and efforts of the beef systems center of excellence, and any gifts, grants, and donations so received are appropriated to North Dakota state university for purposes of the beef systems center of excellence.

Approved April 18, 2003

Filed April 18, 2003

CHAPTER 137

SENATE BILL NO. 2040 (Legislative Council) (Information Technology Committee)

DIVISION OF INDEPENDENT STUDY FUNCTIONS

AN ACT to amend and reenact sections 15-19-01, 15-19-02, 15-19-04, and 15-19-06 of the North Dakota Century Code, relating to the division of independent study.

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 courses - Establishment - Enrollment of students - Courses of instruction. The state shall provide correspondence courses through the division of independent study under the following provisions:

1. A complete curriculum by correspondence which has been specifically determined by the ~~state board~~ superintendent of public ~~school education~~ instruction as proper and suitable for instruction under correspondence methods, such determination and approval to be made not less than once in each school year, must be maintained upon the campus of one of the state institutions of higher education ~~by the state board of public school education~~.
2. Unless specifically excused in writing upon the course application forms by the superintendent or an administrator of the school approving the enrollment application, or as provided in subsection ~~6~~ 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 lessons under the supervision of a local supervisor. If not required to attend their local schools, their work may be done at a place designated by the state director ~~in accordance with the rules of the state board of public school education~~. If in attendance at a local school, 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 may provide services to persons who are not North Dakota residents.
4. ~~The correspondence work must be completed in accordance with the rules established by the state board of public school education.~~
5. Correspondence students shall pay for books and materials used by them, postage required to mail reports to the division, and other fees as may be prescribed by the ~~board of public school education~~ state director.

- ~~6-~~ 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 courses offered through the division of independent study. These students may study their correspondence lessons in their learning environment under the supervision of a parent. The tests for the correspondence study must be administered by 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 - Appointment and duties. The program of and all activities related to the division of independent study 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 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 in the manner approved by the ~~state board of public school education~~ educational technology council.

SECTION 3. AMENDMENT. Section 15-19-04 of the North Dakota Century Code is amended and reenacted as follows:

15-19-04. Duty of teachers, county and state officers, and institutions superintendent - Advertising. ~~The state board of public school education and the superintendent or a member an employee of the department of public instruction designated by the superintendent shall approve ensure that the content of courses offered, by the division of independent study meet state content standards and shall monitor compliance with sections 15.1-18-02 and 15.1-18-03, approve credits granted for each course, and do all other things necessary to integrate the correspondence program into other programs administered or supervised by the department of public instruction. The division of independent study may advertise its correspondence program, however, the state board of public school education and the superintendent of public instruction shall ensure that the program in no way competes with the public schools of this state for the enrollment of students, encourages students to leave the public schools, or duplicates the facilities of the public schools through offering correspondence courses to students having access to such courses in the public schools.~~

SECTION 4. 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 must be maintained within the state treasury and all income and fees collected by the division of independent study 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 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. 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 for the payment of necessary expenses in the administration and operation of the division of independent study 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. The council shall determine the amount of the bond to be posted by the director.
3. The ~~state board of public school education~~ educational technology council may establish a scholarship fund to provide financial grants to students enrolled in courses offered through the division of independent study. The scholarship fund may consist only of those funds specifically appropriated by the legislative assembly and property received by the ~~board council~~ council or the division of independent study as a gift, devise, or bequest. Any gift, devise, or bequest of property received by the ~~board council~~ council or division of independent study which is designated by the ~~board council~~ 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 may draw only on the interest earned by the scholarship fund for the award of scholarships within the limits and rules adopted by the ~~state board of public school education~~ educational technology council. The interest earned by the scholarship fund is appropriated to the division of independent study.

Approved March 14, 2003

Filed March 17, 2003

CHAPTER 138

HOUSE BILL NO. 1183

(Education Committee)

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

STATE BOARD FOR CAREER AND TECHNICAL EDUCATION

AN ACT to amend and reenact subsection 3 of section 4-14.2-03, subsection 1 of section 4-24-11.1, section 4-37-03, subsections 3 and 4 of section 6-09.10-02.1, subsection 1 of section 6-09.10-06, subsection 2 of section 12-44.1-01, sections 12-44.1-17 and 12-46-25, subsection 4 of section 12.1-32-07, sections 14-06.1-07 and 14-06.1-09, subsection 2 of section 14-08.1-05.1, subsection 1 of section 14-10.2-01, sections 15-10-18.3, 15-10-18.5, 15-20.1-01, 15-20.1-02, 15-20.1-03, 15-20.1-03.1, 15-20.1-04, 15-20.1-05, 15-20.1-06, 15-20.1-07, 15-20.1-11, 15-20.1-21, 15-20.2-01, 15-20.2-02, 15-20.2-03, 15-20.2-04, 15-20.2-05, 15-20.2-07, 15-20.2-08, 15-20.2-09, 15-20.2-10, 15-20.2-11, 15-20.2-12, 15-20.2-13, 15-20.2-14, 15-20.2-15, and 15-20.2-16, subsections 2 and 6 of section 15-20.4-01, subsection 11 of section 15-39.1-04, sections 15-63-02, 15-63-03, 15-63-04, 15-63-05, and 15.1-01-02, subsection 4 of section 15.1-02-13, subsection 7 of section 15.1-09-33, subsection 1 of section 15.1-09-36, subsection 1 of section 15.1-12-10, subsection 1 of section 15.1-13-01, subsection 4 of section 15.1-13-10, sections 15.1-14-23, 15.1-14-24, 15.1-14-25, 15.1-14-26, 15.1-14-27, 15.1-14-28, 15.1-14-29, 15.1-14-30, 15.1-14-31, and 15.1-14-32, subsection 5 of section 15.1-16-20, subsection 7 of section 15.1-21-02, section 15.1-25-01, subsection 1 of section 15.1-27-18, section 15.1-27-28, subsection 4 of section 15.1-27-37, subsections 3 and 6 of section 19-03.1-23, subsection 1 of section 19-03.1-23.1, sections 25-06-02, 25-07-04, 27-21-02, and 27-21-03, subsection 1 of section 27-21-06, sections 27-21-07, 27-21-09, 34-05-01.3, and 34-06-15, subsection 1 of section 37-07.1-02, section 40-57-02, subsection 3 of section 40-57-03, sections 40-57.2-01, 40-57.2-04, 43-35-13, 50-09-02.2, 50-11-01, 52-02-02.1, 52-02-08, and 52-08-12, subsection 2 of section 52-08.1-04, section 52-09-08, subsection 12 of section 54-10-14, section 54-56-01, subsection 2 of section 54-59-17, section 54-60-06, subsection 16 of section 57-15-06.7, subsection 15 of section 57-15-10, subsections 1 and 2 of section 57-15-14.2, section 57-15-17, subdivision m of subsection 1 of section 57-38-01.2, and subsection 2 of section 57-38-67 of the North Dakota Century Code, relating to changing the name of "state board for vocational and technical education" to "state board for career and technical education", changing the name of "area vocational and technology centers" to "area career and technology centers", authorizing area vocational and technology centers to accept property and grants from the federal government, and designating a department of career and technical education; and to repeal section 15-20.1-10 of the North Dakota Century Code, relating to the powers of the school board of a vocational school district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 4-14.2-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Educational and ~~vocational~~ career and technical education training programs in milling, processing, manufacturing, purchasing methods, marketing procedures, product sales techniques, and other related subjects to be conducted for users of northern crops.

SECTION 2. AMENDMENT. Subsection 1 of section 4-24-11.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The North Dakota agricultural hall of fame committee consists of the following individuals, each of whom must be selected by the governing body of the entity or the official to be represented:
 - a. A representative of the North Dakota winter show;
 - b. A representative of agricultural media;
 - c. A representative of ~~vocational~~ agriculture in the area of career and technical education;
 - d. A representative of the North Dakota stockmen's association;
 - e. A representative of the North Dakota grain growers association;
 - f. A representative of the North Dakota oilseed council;
 - g. A representative of county extension agents;
 - h. A representative of the agriculture commissioner;
 - i. A representative of the North Dakota pork producers;
 - j. A representative of the North Dakota sheep producers;
 - k. A representative of the national agricultural marketing association;
 - l. A representative of the North Dakota implement dealers association;
 - m. A representative of the North Dakota farm bureau;
 - n. A representative of the North Dakota farmers union; and
 - o. A representative of the national farmers organization.

⁵⁸ **SECTION 3. AMENDMENT.** Section 4-37-03 of the North Dakota Century Code is amended and reenacted as follows:

⁵⁸ Section 4-37-03 was also amended by section 8 of Senate Bill No. 2009, chapter 30.

4-37-03. Purpose - Powers and duties. The agriculture in the classroom council shall develop agricultural curriculum activities and train teachers in these agricultural curriculum activities for grades kindergarten through twelve in this state's public school system. The council shall work with all educators, including the superintendent of public instruction, the ~~state board for vocational~~ department of career and technical education, the United States department of agriculture, and the state agriculture commissioner in accomplishing its purpose. The council shall render services consistent with this purpose which include:

1. Consultations with the state superintendent of public instruction, the ~~state board for vocational~~ department of career and technical education, the state agriculture commissioner, and the United States department of agriculture.
2. Preparation of instructional, informational, and reference publications on the North Dakota agricultural economy and rural lifestyles.
3. Provide training programs for public school teachers in developed agricultural curriculum activities.
4. Encourage research on and identification of new instructional, informational, and reference publications relating to this state's agricultural economy and rural lifestyles.
5. Monitor the quality and condition of the agriculture in the classroom program.

SECTION 4. AMENDMENT. Subsections 3 and 4 of section 6-09.10-02.1 of the North Dakota Century Code are amended and reenacted as follows:

3. Recommend policies and procedures regarding the adult farm management program to the state board for ~~vocational~~ career and technical education.
4. Participate in a farm management delivery system coordinated by the state board for ~~vocational~~ 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.

SECTION 5. AMENDMENT. Subsection 1 of section 6-09.10-06 of the North Dakota Century Code is amended and reenacted as follows:

1. A revolving fund must be maintained at the Bank of North Dakota for the subsidy of interest rates on home-quarter purchases and coordination and operation of a farm management delivery system, as provided in this chapter. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund are hereby appropriated for the purposes of this chapter. Any moneys generated by the farm management delivery system must be transferred to the state board for ~~vocational~~ career and technical education and allocated by the state board for ~~vocational~~ career and technical education to the adult farm management program, the agricultural mediation services, and North Dakota state university for expenses related to the jointly developed and implemented farm management delivery system.

SECTION 6. AMENDMENT. Subsection 2 of section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be used to require the provision of services including treatment, counseling, ~~vocational~~ career and technical education, or other educational services, except as may otherwise be required or provided for under this chapter.

SECTION 7. AMENDMENT. Section 12-44.1-17 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-17. Inmate educational and counseling programs. A correctional facility may utilize the resources of the community to provide inmates with available educational, ~~vocational~~ career and technical education, counseling, and work release opportunities. A correctional facility may, if possible, and subject to reasonable safety, security, discipline, and correctional facility administration requirements, provide opportunities for access to available religious, mental health, alcoholism, and addiction counseling by inmates desirous of such counseling.

SECTION 8. AMENDMENT. Section 12-46-25 of the North Dakota Century Code is amended and reenacted as follows:

12-46-25. Youth correctional center ~~vocational~~ career and technical education shop revolving fund. There must be maintained in the Bank of North Dakota by the North Dakota youth correctional center a ~~vocational~~ career and technical education shop revolving fund to purchase required parts and supplies for student ~~vocational~~ career and technical education training projects. The amounts taken from the fund must be paid back to the fund from collections made on these projects. The provisions of section 54-27-10 do not apply to this fund and no part of the fund reverts at the expiration of any biennium.

⁵⁹ **SECTION 9. AMENDMENT.** Subsection 4 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~vocational~~ 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.

⁵⁹ Section 12.1-32-07 was also amended by section 2 of Senate Bill No. 2044, chapter 112.

- 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 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 3 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 10. AMENDMENT. Section 14-06.1-07 of the North Dakota Century Code is amended and reenacted as follows:

14-06.1-07. Program goals. Each of the service centers shall develop a goal to serve a stated number of urban and rural displaced homemakers. In addition, the service centers shall develop plans for including displaced homemakers in existing job training and placement programs offered by job service, colleges, ~~vocational~~ career and technical education, or other suitable agencies.

SECTION 11. AMENDMENT. Section 14-06.1-09 of the North Dakota Century Code is amended and reenacted as follows:

14-06.1-09. Service programs. The service centers shall, in cooperation with other existing service programs, ensure that displaced homemakers receive information and referral services which include:

1. A health counseling and referral clinic based on principles of preventive health care and consumer health education.
2. Money management courses, including information and assistance in dealing with insurance programs (life, health, home, and automobile), taxes, mortgages, loans, and probate problems.
3. Information about other assistance programs, including concrete information and assistance with supplemental security income, social security, veterans administration benefits, welfare, food stamps, housing, unemployment insurance, medical assistance, and educational financial assistance.
4. Educational programs, including courses offered for credit through universities, colleges, or ~~vocational~~ career and technical education training programs, or leading toward a high school equivalency degree. These courses must be designed to supplement the usual academic course offerings with classes geared toward older persons to improve their self-image and abilities.

⁶⁰ **SECTION 12. AMENDMENT.** Subsection 2 of section 14-08.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this section, "work activities" may include:
 - a. Unsubsidized employment;
 - b. Subsidized private sector employment;
 - c. Subsidized public sector employment;

⁶⁰ Section 14-08.1-05.1 was also amended by section 1 of Senate Bill No. 2155, chapter 411.

- d. Work experience, including work associated with the refurbishing of publicly assisted housing, if sufficient private sector employment is not available;
- e. On-the-job training;
- f. Job search and job readiness assistance;
- g. Community service programs;
- h. ~~Vocational educational~~ Career and technical education training, not to exceed twelve months with respect to any individual;
- i. Job skills training directly related to employment;
- j. Education directly related to employment, in the case of an individual who has not received a high school diploma or a certificate of high school equivalency;
- k. Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of an individual who has not completed secondary school or received such a certificate;
- l. The provision of child care services to an individual who is participating in a community service program; and
- m. Postsecondary education and any other activity treated by the federal government as work for purposes of calculating a work participation rate under 42 U.S.C. 607(b).

SECTION 13. AMENDMENT. Subsection 1 of section 14-10.2-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Educational institution" means a university, college, community college, junior college, high school, technical, ~~vocational~~ career and technical education or professional school, or similar institution, wherever located, approved or accredited by the appropriate official, department, or agency of this state for the purposes of this chapter, or by the appropriate official, department, or agency of the state in which the institution is located.

SECTION 14. AMENDMENT. Section 15-10-18.3 of the North Dakota Century Code is amended and reenacted as follows:

15-10-18.3. Free tuition in North Dakota institutions of higher education.

Any dependent, as defined in section 15-10-18.2 upon being duly accepted for enrollment into any North Dakota state-supported institution of higher education or state-supported career and technical or vocational education school, must be allowed to obtain a bachelor's degree or certificate of completion, for so long as the dependent is eligible, free of any tuition and fee charges, except those charged to retire outstanding bonds; provided, however, that the bachelor's degree or certificate of completion is earned within a thirty-six-month or eight-semester period or its equivalent; and further provided that tuition and fee charges shall not include costs for aviation flight charges or expenses. Once a person qualifies as a dependent under sections 15-10-18.2 and 15-10-18.3, there shall be no removal from the

benefits of this section due to such an occurrence as the return of the prisoner of war or person missing in action.

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

15-10-18.5. Free tuition in North Dakota institutions of higher education for survivor of firefighter or peace officer. Should a firefighter or peace officer die as a direct result of injuries received while engaged in the performance of official duties under circumstances dangerous to human life, the survivor, upon being duly accepted for enrollment into any North Dakota state-supported institution of higher education or state-supported career and technical or vocational education school, must be allowed to obtain a bachelor's degree or certificate of completion, for so long as the dependent is eligible, free of any tuition and fee charges, except those charged to retire outstanding bonds; provided, however, that the bachelor's degree or certificate of completion is earned within a thirty-six-month or eight-semester period or its equivalent; and further provided that tuition and fee charges may not include costs for aviation flight charges or expenses.

SECTION 16. AMENDMENT. Section 15-20.1-01 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Career and technical education" includes vocational education.
2. "Department" means the department of career and technical education, which consists of the director and other persons appointed or designated by the state board or the director to carry out the duties of the state board.
3. "Director" means the director of ~~vocational~~ career and technical education.
- ~~2- 4.~~ "Regulations" means regulations made by the director with the approval of the state board.
- ~~3- 5.~~ "State board" means the state board for ~~vocational~~ career and technical education.

SECTION 17. AMENDMENT. Section 15-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-02. State board for ~~vocational~~ career and technical education - Director of ~~vocational~~ career and technical education - Appointment, qualifications, assistants, duties. The state board for ~~vocational~~ career and technical education consists of the members of the state board of public school education, the executive director of job service North Dakota, and the commissioner of higher education or the commissioner's designee. The state board shall oversee the department and appoint a director and executive officer of ~~vocational~~ career and technical education who are charged with the administration, under the direction and supervision of the board, of the provisions of this chapter relating to ~~vocational~~ career and technical education. The state board shall designate such assistants to the director as may be necessary to carry out the provisions of this chapter. The duties, terms of office, and compensation of the director and of ~~his~~ the director's

assistants must be determined by the state board. The director shall hold as a minimum a baccalaureate degree received from a recognized college or university. The director shall enforce such rules and regulations as the state board may adopt and shall prepare such reports concerning ~~vocational~~ career and technical education as the state board may require.

SECTION 18. AMENDMENT. Section 15-20.1-03 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-03. Powers and duties of state board relating to ~~vocational~~ career and technical education. The state board shall have all authority necessary to cooperate with the United States department of education, or other department or agency of the United States of America in the administration of acts of Congress relating to ~~vocational~~ career and technical education, including the following powers and duties:

1. To administer any legislation enacted by the legislative assembly of this state pursuant to or in conformity with acts of Congress relating to ~~vocational~~ career and technical education.
2. To administer the funds provided by the federal government and by this state for the promotion of ~~vocational~~ career and technical education, and to contract with:
 - a. Any public or private institution or agency, board of trustees of any agricultural and training school, or school district of this state; or
 - b. Any public or private institution or agency, or political subdivision, of another state.
3. To formulate plans for the promotion of ~~vocational~~ career and technical education in such subjects as are an essential and integral part of the public school system of education in this state.
4. To provide for the preparation of teachers.
5. To fix the compensation of such officers and assistants as may be necessary to administer the federal acts and the provisions of this chapter relating to ~~vocational~~ career and technical education and to pay the same and other necessary expenses of administration from any funds appropriated for such purpose.
6. To make studies and investigations relating to ~~vocational~~ career and technical education.
7. To promote and aid in the establishment of schools, departments, or classes, and to cooperate with local communities in the maintenance of ~~vocational~~ career and technical education schools, departments, or classes.
8. To prescribe the qualifications and provide for the certification of teachers, directors, and supervisors.
9. To cooperate with governing bodies of school districts and with organizations and communities in the maintenance of classes for the preparation of teachers, directors, and supervisors of ~~vocational~~ career

and technical education, to maintain classes for such purposes under its own direction and control, and to establish and control, by general regulations, the qualifications to be possessed by persons engaged in the training of ~~vocational~~ career and technical education teachers.

10. To coordinate new and existing farm management programs offered by any state agency or entity.
11. To create and expand marketing clubs as adjuncts to new and existing farm management programs.

SECTION 19. AMENDMENT. Section 15-20.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-03.1. Postsecondary ~~vocational~~ career and technical education reciprocity with Minnesota. The state board may enter into agreements with the Minnesota higher education coordinating board or with the governing board of any public postsecondary ~~vocational~~ career and technical institute in that state to enable, on a reciprocal basis, any resident of North Dakota to attend an approved ~~vocational~~ career and technical education program in Minnesota and to permit any resident of Minnesota to attend an approved ~~vocational~~ career and technical education program in North Dakota without being required to pay nonresident tuition fees. For the purposes of this section, "approved ~~vocational~~ career and technical education program" means any postsecondary ~~vocational~~ or career and technical program offered by a Minnesota area ~~vocational~~ career and technical institute or a district-operated junior college in North Dakota. Any agreement made pursuant to this section may provide for the transfer of funds between the states and any payment to Minnesota by North Dakota must be within the limitations of the payment due North Dakota from Minnesota under the authority contained in chapter 15-10.1. Any payment to North Dakota by Minnesota must be deposited in the state's general fund.

SECTION 20. AMENDMENT. Section 15-20.1-04 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-04. Acceptance of benefits of federal acts in ~~vocational~~ career and technical education - Cooperation with federal government. The state of North Dakota hereby accepts all of the provisions and benefits of the acts of Congress to assist states to maintain, extend, and improve existing programs and develop new programs in ~~vocational~~ career and technical education.

SECTION 21. AMENDMENT. Section 15-20.1-05 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-05. Custody and payment of ~~vocational~~ career and technical education funds. The state board is charged with the duty of administering all funds that are received from federal and state sources and shall accept and use gifts made unconditionally by will or otherwise for purposes of carrying out this chapter for ~~vocational~~ career and technical education. All such moneys received must be placed in the custody of the state treasurer, and must be paid in accordance with legislative appropriations by the office of management and budget as directed by the director of ~~vocational~~ career and technical education.

SECTION 22. AMENDMENT. Section 15-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-06. Reimbursement of schools teaching subjects in ~~vocational~~ career and technical education. The state board may reimburse approved public or private institutions or agencies, or political subdivisions of this state or of another state, giving instruction in ~~vocational~~ career and technical education from funds allocated for that purpose. The state board may prorate the sums available if funds are insufficient to reimburse at the rate established by the state board.

SECTION 23. AMENDMENT. Section 15-20.1-07 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-07. Cooperation of school boards in ~~vocational~~ career and technical education. The governing body of any school district may cooperate with the state board in the establishment and maintenance of schools, departments, or classes giving instruction in ~~vocational~~ career and technical education as approved by the state board, and may use any moneys raised by public taxation for such purposes in the same manner as the moneys for other school purposes are used for the maintenance and support of public schools. When any school, department, or class giving instruction in ~~vocational~~ career and technical education has been approved by the state board, it may be entitled to share in any federal and state funds available for ~~vocational~~ career and technical education.

SECTION 24. AMENDMENT. Section 15-20.1-11 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-11. Curriculum - General powers and duties. The curriculum offered students by a ~~vocational school~~ an area career and technology center must be as determined by the school board; provided, that such curriculum must be submitted annually to the state board for approval, and only an approved curriculum may be offered.

SECTION 25. AMENDMENT. Section 15-20.1-21 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-21. Biennial report. The state board may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. If submitted, the report must set forth the condition of ~~vocational~~ career and technical education in the state, a list of the schools to which federal and state aid for ~~vocational~~ career and technical education has been given, and a detailed statement of the expenditures of federal and state funds for that purpose.

SECTION 26. AMENDMENT. Section 15-20.2-01 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-01. Area centers - Definition of terms. In this chapter, unless the context otherwise requires:

1. "Area ~~vocational~~ career and technology center" means a program of ~~vocational~~ career and technical education conducted at one or more attendance centers by three or more participating public school districts.
2. "Center board" means the governing board of an area ~~vocational~~ career and technology center.
3. "Participating district" means a public school district whose students are attending an area ~~vocational~~ career and technology center.

4. "School board" means a participating public school district board.
5. "State board" means the state board for ~~vocational~~ career and technical education.

SECTION 27. AMENDMENT. Section 15-20.2-02 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-02. Submission of plan for area center - Approval by state board. The school boards of three or more school districts may submit to the state board a proposed plan to establish an area ~~vocational~~ career and technology center. Such proposal must be consistent with the state plan for ~~vocational~~ career and technical education and meet the requirements, rules, standards, and procedures as adopted by the state board. The state board upon receipt of a proposed plan to establish an area ~~vocational~~ career and technology center shall examine such plan and receive testimony for the purpose of examining supporting and nonsupporting evidence submitted therewith. The state board shall process the proposed plan according to procedures consistent with the state plan. Nothing in this chapter may be interpreted to prohibit school districts from entering into other kinds of administrative structures for ~~vocational~~ career and technology centers approved by the state board pursuant to other provisions of law.

SECTION 28. AMENDMENT. Section 15-20.2-03 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-03. Agreement of participation in area center - Resolution of agreement. After approval of a plan pursuant to this chapter, all participating school districts of an area ~~vocational~~ career and technology center shall enter into an agreement of participation which must receive a vote of approval of the school board of each participating school district. Prior to the effective date of an approved plan, a resolution of agreement must be adopted by a majority vote of each participating school board and such resolution must be published once in the official newspaper of each county or counties of the participating school districts.

SECTION 29. AMENDMENT. Section 15-20.2-04 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-04. Center boards - Appointment of members - Terms - Compensation - Vacancies. An area ~~vocational~~ career and technology center must be operated by a center board of not less than five members nor more than a total of one member for each participating district; provided, however, that each participating school district with three hundred or more high school students must be allowed one member for each three hundred high school students or fraction thereof with a limitation of not more than three members from any one school district. Center board members must be members of the school boards. The terms of office of the members of center boards must be for at least one year and terminate upon the expiration of their terms on their respective school boards. Members are eligible for reappointment to center boards. Center board members shall receive the same compensation and expenses for attending center board meetings or for otherwise engaging in official business for the center as provided in section 15.1-09-06 for members of school boards. Compensation and expenses of center board members must be paid out of center funds.

Vacancies on a center board must be filled by the school board whose representation was lost when the vacancy occurred.

SECTION 30. AMENDMENT. Section 15-20.2-05 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-05. Special board plan for small center. If four or fewer school districts comprise an area ~~vocational~~ career and technology center and if enrollment within such school district is insufficient to provide five members in accordance with section 15-20.2-04, the boards of such school district shall agree upon the number and manner of selection of members of the center board and shall submit their plan of selection for approval by the state board pursuant to section 15-20.2-02.

SECTION 31. AMENDMENT. Section 15-20.2-07 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-07. Powers and duties of center boards. The powers and duties of a center board are as follows:

1. To supervise, manage, and control an area ~~vocational~~ career and technology center established by the cooperating school districts pursuant to this chapter.
2. To provide ~~vocational~~ career and technical education programs approved by the state board.
3. To contract with, employ, and pay personnel to administer the affairs and to teach in the area ~~vocational~~ career and technology center, and to remove for cause any personnel when the interests of the area ~~vocational~~ career and technology center may require it; provided, that personnel employed by a center board shall have the same statutory rights as provided by law for personnel employed by public school districts.
4. To lease, acquire, or purchase ~~vocational~~ career and technical education equipment for an area ~~vocational~~ career and technology center.
5. To lease, acquire, purchase, or sell ~~vocational~~ career and technical education facilities, including real property, for an area ~~vocational~~ career and technology center; provided, that any purchase or sale of real property must first be approved by two-thirds of the school boards of the participating school districts.
6. To receive and administer any private, local, state, or federal funds provided for the operation and maintenance of an area ~~vocational~~ career and technology center.
7. To enter into contracts consistent with the other powers and duties provided for by this chapter.
8. To accept real or personal property available for distribution by the United States or any of its departments or agencies and also to accept federal grants that may be made available in the field of career and technical education.

SECTION 32. AMENDMENT. Section 15-20.2-08 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-08. Assessment of participating districts for proportionate share of center expenses - Allocation of students - Civil penalty for failure to remit payment. A center board shall, for the purpose of paying any administrative, planning, operating, or capital expenses incurred or to be incurred, assess each participating school district its proportionate share based upon its high school enrollment as compared to the total high school enrollment of all participating school districts in the area ~~vocational~~ career and technology center and shall assess each nonparticipating school district receiving services its proportionate share based upon its utilization of programs. A center board shall, as nearly as possible, allocate the number of students from each participating district to be served in an area ~~vocational~~ career and technology center on the same proportionate basis as is used for the assessment of expenses.

A center board utilizing mobile units solely shall, for the purpose of paying any administrative, planning, operating, or capital expenses incurred or to be incurred, assess each participating school district its proportionate share based upon its utilization of programs as compared to total program utilization of all participating school districts in such center. A center board utilizing mobile units solely shall, as nearly as possible, determine the program utilization of each participating school district to be served based upon its high school enrollment as compared to the total high school enrollment of all participating school districts in such center and the school's accessibility to those programs.

Each participating school district shall remit payment of the assessment of its share of expenses to the center board promptly after receipt of the assessment notice, or within a period of time determined by the center board, but no later than sixty days after the official date of receipt as noted on the assessment notice. A civil penalty of one percent per month must accrue on all assessments not paid when due.

SECTION 33. AMENDMENT. Section 15-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-09. Distribution of state funds to area centers - Rules and regulations. Funds which may be made available to the state board for distribution to area ~~vocational~~ career and technology centers must be apportioned and distributed by the state board to the area ~~vocational~~ career and technology centers to assist such centers in defraying the cost involved in maintaining and operating such centers. The use of such funds is subject to such rules and regulations as may be prescribed by the state board, and must be in accordance with the approved state plan for ~~vocational~~ career and technical education.

SECTION 34. AMENDMENT. Section 15-20.2-10 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-10. Appropriated and federal funds used for distribution. The funds distributed to the area ~~vocational~~ career and technology centers under the provisions of section 15-20.2-09 must be paid out of moneys appropriated to the state board for ~~vocational~~ career and technical education, including federal funds allotted to the state to promote and attain the purposes of state and federal legislation on ~~vocational~~ career and technical education.

SECTION 35. AMENDMENT. Section 15-20.2-11 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-11. District becoming participant in established center - Procedure. After an area ~~vocational~~ career and technology center has been established, any other school district may become a participant in the center and may be governed by the provisions of this chapter upon following a process similar to that pursued by the school districts originally forming the center, including approval of the vote of the district board, the center board, and the state board according to the procedure set forth in sections 15-20.2-12 and 15-20.2-13.

SECTION 36. AMENDMENT. Section 15-20.2-12 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-12. District board resolution to participate in established center - Publication. A school district board may request that the state board and the center board approve such school district as a participating district in an established area ~~vocational~~ career and technology center upon approval of a resolution by the school district board. When such resolution has been adopted by the school district board, it must be published once in the official newspaper of the county or counties in which the district is located.

SECTION 37. AMENDMENT. Section 15-20.2-13 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-13. Referendum on district participation in area center - Majority required for approval. A school district board may not proceed to obtain approval as a participating district in an area ~~vocational~~ career and technology center if a petition for referendum of the question of said school district participating in an area ~~vocational~~ career and technology center signed by twenty percent of the qualified electors of said school district voting at the last annual school election is filed with the school board within sixty days of the publication of the resolution provided for in section 15-20.2-12. When such petition is filed, the school board may not obtain approval as a participating district in an area ~~vocational~~ career and technology center until the question of whether the district shall enter into an area ~~vocational~~ career and technology center has been submitted to the qualified electors of the district. If a majority of the total number of votes cast on the question within the school district is in favor of the question, the school board may proceed to obtain approval as a participating district in an area ~~vocational~~ career and technology center.

SECTION 38. AMENDMENT. Section 15-20.2-14 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-14. Withdrawal of district from participation in center - Submission to voters - Effect of withdrawals. The procedure for withdrawal is the same as for joining as provided for in sections 15-20.2-11 through 15-20.2-13, except that when a participating district is unable to obtain an approval of withdrawal from the center board, or the state board, or both, the participating district may submit the question to withdraw from the area ~~vocational~~ career and technology center to the voters of the school district. If a majority of the total number of votes cast on the question is in favor of withdrawal, the participating school district must be released from the area ~~vocational~~ career and technology center. Such withdrawal may become effective at the end of the next school year or on such a date as determined by the state board, but such withdrawal does not affect the liability of the withdrawing school district for obligations incurred during its participation.

SECTION 39. AMENDMENT. Section 15-20.2-15 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-15. Dissolution of established center. An established area ~~vocational~~ career and technology center may be dissolved in accordance with rules and procedures adopted by the state board.

SECTION 40. AMENDMENT. Section 15-20.2-16 of the North Dakota Century Code is amended and reenacted as follows:

15-20.2-16. Rules, regulations, and standards for area centers. The state board is ~~hereby~~ authorized and empowered to establish and adopt rules, regulations, standards, and procedures set forth in the state plan pertaining to the creation, operation, control, supervision, and approval of area ~~vocational~~ career and technology centers.

SECTION 41. AMENDMENT. Subsections 2 and 6 of section 15-20.4-01 of the North Dakota Century Code are amended and reenacted as follows:

2. "Board" means the state board for ~~vocational~~ career and technical education.
6. "Executive officer" means the director of ~~vocational~~ career and technical education.

⁶¹ **SECTION 42. 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 ~~state board for vocational~~ department of career and technical education, the professional staff of the division of independent study, 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.

⁶¹ Section 15-39.1-04 was also amended by section 1 of Senate Bill No. 2057, chapter 140.

- 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.

SECTION 43. AMENDMENT. Section 15-63-02 of the North Dakota Century Code is amended and reenacted as follows:

15-63-02. Duties of board. The state board for Indian scholarships shall:

1. Award scholarship grants as provided in this chapter.
2. Make necessary rules and establish standards, requirements, and procedures for the administration of this chapter.
3. Encourage members of Indian tribes to attend and be graduated from any institution of higher learning or state ~~vocational~~ career and technical education program within this state, and to make application for scholarships.

SECTION 44. AMENDMENT. Section 15-63-03 of the North Dakota Century Code is amended and reenacted as follows:

15-63-03. Number and nature of scholarships. The state board for Indian scholarships shall provide scholarships each year for resident members of federally recognized Indian tribes to entitle persons so selected to enter and attend any institution of higher learning or state ~~vocational~~ career and technical education program within this state upon compliance with all requirements for admission and to pursue any course or courses offered in such institutions or programs.

SECTION 45. AMENDMENT. Section 15-63-04 of the North Dakota Century Code is amended and reenacted as follows:

15-63-04. Eligibility of candidates - Determination. The initial and continuing scholarship eligibility of state residents who are enrolled members of federally recognized Indian tribes must be determined by the state board for Indian scholarships after the candidate has gained admission to any institution of higher learning or state ~~vocational~~ career and technical education program within this state and has had this fact certified to the board. Factors to be considered in the award of these scholarships are the candidate's financial need and probable and continuing success as a student.

SECTION 46. AMENDMENT. Section 15-63-05 of the North Dakota Century Code is amended and reenacted as follows:

15-63-05. Scholarship payments - Conditions. Upon the granting of a scholarship and acceptance thereof, the recipient is eligible for a credit in fees in the enrolling institution of higher learning or state ~~vocational~~ career and technical education program to apply toward the cost of registration, health, activities, board, books, and other necessary items of not to exceed six hundred sixty-seven dollars per quarter for three quarters, or one thousand dollars per semester for two semesters, in any academic year. The board for Indian scholarships may reduce the

amount of any scholarship to accord with individual financial need or funds available. After the enrolling institution or program has deducted the amount due such institution, the remaining balance must be given to the recipient for necessary expenses during the quarter or semester. At the beginning of each quarter or semester of a regular academic year, the board for Indian scholarships shall certify to the director of the office of management and budget the name of each recipient and the amount payable, and the director of the office of management and budget shall issue ~~his~~ a warrant to the state treasurer who shall pay the amount of the scholarship to the institution of higher learning or state ~~vocational~~ career and technical education program in which the recipient is enrolled. Renewal of the scholarship award is subject to the maintenance of a minimum grade average of "C" in the courses taken.

SECTION 47. AMENDMENT. Section 15.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

15.1-01-02. Joint meetings - State board of public school education - State board of higher education - Education standards and practices board - State board for ~~vocational~~ career and technical education. The state board of public school education, the state board of higher education, the education standards and practices board, and the state board for ~~vocational~~ career and technical education shall meet together at least once each year at the call of the superintendent of public instruction, the commissioner of higher education, the executive director of the education standards and practices board, and the director of ~~vocational~~ career and technical education for the purposes of:

1. Coordinating elementary and secondary education programs, ~~vocational~~ career and technical education programs, and higher education programs.
2. Cooperating in the provision of professional growth and development opportunities for elementary and secondary teachers and administrators.
3. Ensuring cooperation in any other jointly beneficial project or program.

⁶² **SECTION 48. AMENDMENT.** Subsection 4 of section 15.1-02-13 of the North Dakota Century Code is amended and reenacted as follows:

4. For purposes of this section:
 - a. "Administrator" means an individual employed by a school district in an administrative position and includes a school district superintendent, an assistant or associate superintendent, a principal, an assistant principal, a special education director, a ~~vocational~~ career and technical education director, and any other individual whose position requires an administrator's credential.
 - b. "Teacher" means an individual, other than an administrator, who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices

⁶² Section 15.1-02-13 was also amended by section 1 of House Bill No. 1295, chapter 145.

board and who is employed by the board of a school district in a position classified by the superintendent of public instruction as of July 1, 2001, as:

- (1) A class 22 coordinator;
- (2) A class 37 guidance counselor or school counselor;
- (3) A class 38 guidance counselor designate;
- (4) A class 40 instructional programmer;
- (5) A class 41 library media specialist;
- (6) A class 56 pupil personnel service provider;
- (7) A class 59 school psychologist;
- (8) A class 62 speech-language pathologist;
- (9) A class 68 supervisor;
- (10) A class 70 teacher or special education teacher; or
- (11) A class 72 tutor in training.

SECTION 49. AMENDMENT. Subsection 7 of section 15.1-09-33 of the North Dakota Century Code is amended and reenacted as follows:

7. Lease real property for a maximum of one year except in the case of a ~~vocational~~ 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.

⁶³ **SECTION 50. AMENDMENT.** Subsection 1 of section 15.1-09-36 of the North Dakota Century Code is amended and reenacted as follows:

1. A school board may:
 - a. Require that a student pay a security deposit for the return of textbooks, materials, supplies, or equipment.
 - b. Assess a student a use charge if a textbook or other item covered under subsection 1 has received undue wear.
 - c. Require that a student furnish personal or consumable items.
 - d. Require that a student pay an admission fee or other charges for extracurricular or noncurricular activities if the student's attendance is optional.

⁶³ Section 15.1-09-36 was also amended by section 1 of Senate Bill No. 2169, chapter 154.

- e. Require that a student pay a fee or a premium for any authorized student health and accident benefit plan.
- f. Require that a student pay a fee for personal athletic equipment and apparel; provided the board shall allow a student to use the student's own equipment and apparel if it meets reasonable health and safety standards established by the board.
- g. Require that a student pay a fee in any program which generates a product that becomes the personal property of the student.
- h. Require that a student pay a fee for behind-the-wheel driver's education instruction.
- i. Require that a student pay a fee for goods, including textbooks, and services provided in connection with any postsecondary level program or any program established outside regular elementary, middle school, or secondary school programs, including ~~vocational~~ career and technical programs, and adult or continuing education programs.
- j. Require that a student pay any other fees and charges permitted by statute.

SECTION 51. 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 ~~vocational~~ 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 any other information that the participating school districts wish to have considered by the county committee or the state board.

SECTION 52. AMENDMENT. Subsection 1 of section 15.1-13-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Administrator" means an individual who holds an administrator's credential and who is employed by the board of a school district for the primary purpose of providing administrative services to the schools of the district. The term includes a school district superintendent, an assistant or associate school district superintendent, a school principal, an assistant or associate school principal, a special education director, a director of a multidistrict special education unit, a ~~vocational~~ career and technical education director, and a director of a ~~vocational~~ an area career and technology center. The term may include an athletic or activity director who meets the requirements of this subsection.

SECTION 53. AMENDMENT. Subsection 4 of section 15.1-13-10 of the North Dakota Century Code is amended and reenacted as follows:

4. This section does not affect the qualifications for ~~vocational~~ career and technical education certificates, as otherwise established by law.

SECTION 54. AMENDMENT. Section 15.1-14-23 of the North Dakota Century Code is amended and reenacted as follows:

15.1-14-23. Area ~~vocational~~ career and technology center - Director - Evaluation.

1. Before December fifteenth of each year, the board of an area ~~vocational~~ career and technology center shall conduct a formative evaluation of the director's performance.
2. Before March fifteenth of each year, the board shall conduct a formal evaluation of the director's performance. The board shall place a copy of the evaluation report in the director's file and shall provide a copy of the evaluation report to the director.
3. If the board finds the director's performance to be unsatisfactory in any area, the board shall detail its findings regarding the director's performance in the report and shall make recommendations.
4. Upon receiving the report, the director may provide a written response to the board. The board shall place the director's written response in the director's personnel file.
5. The board shall meet with the director to discuss the evaluation.

SECTION 55. AMENDMENT. Section 15.1-14-24 of the North Dakota Century Code is amended and reenacted as follows:

15.1-14-24. Area ~~vocational~~ career and technology center - Director - Grounds for dismissal. The board of an area ~~vocational~~ career and technology center may dismiss a director prior to the expiration of the individual's contract for any of the following causes:

1. Immoral conduct.
2. Insubordination.
3. Conviction of a felony.
4. Conduct unbecoming the position of a director.
5. Failure to perform contracted duties without justification.
6. Gross inefficiency that the director has failed to correct after written notice.
7. Continuing physical or mental disability that renders the director unfit or unable to perform the director's duties.

SECTION 56. AMENDMENT. Section 15.1-14-25 of the North Dakota Century Code is amended and reenacted as follows:

15.1-14-25. Area ~~vocational~~ career and technology center - Director - Discharge for cause - Notice of hearing - Legal expenses.

1. If the board of an area ~~vocational~~ career and technology center intends to discharge a director for cause prior to the expiration of the director's contract, the board shall:

- a. Provide the director with a written description of the reasons for the discharge; and
 - b. Provide the director with written notice specifying the date and time at which the board will conduct a hearing regarding the discharge.
2. If the director chooses to be accompanied by an attorney, the legal expenses attributable to that representation are the responsibility of the director.

SECTION 57. AMENDMENT. Section 15.1-14-26 of the North Dakota Century Code is amended and reenacted as follows:

15.1-14-26. Area ~~vocational~~ career and technology center - Director - Discharge for cause - Hearing.

1. At the hearing, the director may produce evidence and witnesses to rebut any reasons given by the board of the area ~~vocational~~ career and technology center for its discharge of the director.
2. The hearing must be conducted in accordance with chapter 28-32.
3. All witnesses are subject to cross-examination.
4. Unless otherwise agreed to by the board and the director, the hearing must be conducted as an executive session of the board, except that:
 - a. The director may invite to the hearing any two representatives to speak on behalf of the director and may invite the director's spouse or one other family member.
 - b. The board may invite to the hearing any two representatives to speak on behalf of the board and may invite the center's business manager.
5. If a continuance is requested by the director, the board shall grant a continuance for a period not in excess of seven days. The board may grant a continuance in excess of seven days upon a showing of good cause.
6. No cause of action for libel or slander may be brought regarding any communication made at an executive session held by the board for the purposes provided in this section.

SECTION 58. AMENDMENT. Section 15.1-14-27 of the North Dakota Century Code is amended and reenacted as follows:

15.1-14-27. Area ~~vocational~~ career and technology center - Director - Discharge for cause - Report to the education standards and practices board. If the board of an area ~~vocational~~ career and technology center discharges a director for cause, the board shall report the discharge to the education standards and practices board.

SECTION 59. AMENDMENT. Section 15.1-14-28 of the North Dakota Century Code is amended and reenacted as follows:

15.1-14-28. Area ~~vocational~~ career and technology center - Director - Suspension during discharge proceeding - Compensation. The board of an area ~~vocational~~ career and technology center may suspend a director if, by unanimous vote, the board determines that suspension is appropriate during the period in which a discharge for cause is pursued. If the director is ultimately discharged for cause, the board may determine the amount of compensation, if any, due the director during the period of suspension. If the director is ultimately not discharged, the board may not apply any reduction to the director's salary for the period of suspension.

SECTION 60. AMENDMENT. Section 15.1-14-29 of the North Dakota Century Code is amended and reenacted as follows:

15.1-14-29. Area ~~vocational~~ career and technology center - Director - Nonrenewal of contract - Reasons - Notice.

1. If the board of an area ~~vocational~~ career and technology center contemplates not renewing the contract of a director who has been employed by the board in that position for at least two consecutive years, the board shall on or before April fifteenth:
 - a. Provide written notification of the contemplated nonrenewal to the director.
 - b. Schedule a hearing to be held on or before April twenty-first for the purpose of discussing and acting upon the contemplated nonrenewal.
 - c. Provide written notification of the date, time, and place for the hearing to the director.
 - d. Provide written notification of the reasons for the contemplated nonrenewal to the director.
2.
 - a. The reasons for the contemplated nonrenewal of the director's contract must:
 - (1) Be sufficient to justify the contemplated nonrenewal;
 - (2) Relate to the ability, competence, or qualifications of the director; and
 - (3) Originate from specific findings documented in the formal and written evaluations of the director's performance required by section 15.1-14-23.
 - b. The provisions of this section do not apply if the contemplated nonrenewal is based on a necessary reduction in personnel.

SECTION 61. AMENDMENT. Section 15.1-14-30 of the North Dakota Century Code is amended and reenacted as follows:

15.1-14-30. Area ~~vocational~~ career and technology center - Director - Nonrenewal of contract - Hearing.

1. At the hearing required by section 15.1-14-29, the board of the area ~~vocational~~ career and technology center shall present testimony or

documentary evidence to substantiate the reasons for the contemplated nonrenewal of a director who has been employed by the board in that position for at least two consecutive years.

2. The director may call witnesses and present evidence necessary to refute the reasons for nonrenewal.
3. Each witness appearing on behalf of the board or the director may be questioned for the purpose of clarification.
4. Unless otherwise agreed to by the board and the director, the hearing must be conducted as an executive session of the board, except that:
 - a. The director may invite to the hearing any two representatives to speak on behalf of the director and may invite the director's spouse or one other family member.
 - b. The board may invite to the hearing any two representatives to speak on behalf of the board and may invite the center's business manager.
5. If the director chooses to be accompanied by an attorney, the legal expenses attributable to that representation are the responsibility of the director.
6. If a continuance is requested by the director, the board shall grant a continuance for a period not to exceed seven days.
7. No cause of action for libel or slander may be brought regarding any communication made at an executive session held by the board for the purposes provided in this section.
8. If, after considering the testimony and evidence presented at the hearing, the board chooses not to renew the contract of the director, the board shall provide written notice of its decision to the director on or before May first.

SECTION 62. AMENDMENT. Section 15.1-14-31 of the North Dakota Century Code is amended and reenacted as follows:

15.1-14-31. Area ~~vocational~~ career and technology center - Director - Contract - Failure to provide notice of nonrenewal. The contract of an area ~~vocational~~ career and technology center director is deemed to be renewed for a period of one year from its termination date if:

1. On or before April fifteenth, the board of the center has not provided written notification to the director regarding a contemplated nonrenewal of the director's contract; and
2. On or before June first, the director has not provided to the board a written resignation.

SECTION 63. AMENDMENT. Section 15.1-14-32 of the North Dakota Century Code is amended and reenacted as follows:

15.1-14-32. Area ~~vocational~~ career and technology center - Director - Employed for less than two years - Notification of nonrenewal. If the board of an area ~~vocational~~ career and technology center elects not to renew the contract of a director who has been employed by the board in that position for less than two years, the board shall provide written notice of the nonrenewal to the director before May first. At the request of the director, the board shall meet with the director to convey the reasons for the nonrenewal.

SECTION 64. AMENDMENT. Subsection 5 of section 15.1-16-20 of the North Dakota Century Code is amended and reenacted as follows:

5. For purposes of this section, "teacher" means a contracted state employee who:
 - a. Holds a teaching license or is approved to teach by the education standards and practices board;
 - b. Is employed primarily to provide classroom instruction or individualized instruction;
 - c. Has a work schedule set in accordance with the school calendar;
 - d. Is a guidance counselor, school librarian, itinerant outreach teacher, or a ~~vocational~~ career and ~~technological~~ technical resource person required to meet teaching and licensure requirements; and
 - e. Is not a superintendent, assistant superintendent, principal, supervisor, substitute, or paraprofessional.

SECTION 65. AMENDMENT. Subsection 7 of section 15.1-21-02 of the North Dakota Century Code is amended and reenacted as follows:

7. Any six units selected from business education, economics and the free enterprise system, foreign language, American sign language, and ~~vocational~~ career and technical education courses including family and consumer sciences, agriculture, business and office technology, marketing, diversified occupations, trade and industrial education, technology education, and health careers. The ~~vocational~~ career and technical education courses may be offered through cooperative arrangements approved by the state board for ~~vocational~~ career and technical education.

SECTION 66. AMENDMENT. Section 15.1-25-01 of the North Dakota Century Code is amended and reenacted as follows:

15.1-25-01. Postsecondary enrollment options program. Any North Dakota student enrolled in grade eleven or twelve in a public high school is eligible to receive high school and postsecondary credit for the successful completion of an academic course offered by any postsecondary institution accredited by a regional accrediting organization or a ~~vocational~~ career and technical education course offered by a postsecondary institution in a program accredited by a national or regional accrediting organization recognized by the United States department of education.

SECTION 67. AMENDMENT. Subsection 1 of section 15.1-27-18 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~vocational~~ 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.

SECTION 68. AMENDMENT. Section 15.1-27-28 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-28. School district transportation of ~~vocational~~ career and technical education students - Payments.

1. Each school district is entitled to receive an amount for transporting students to and from schools in other districts and to and from schools within the district for ~~vocational~~ career and technical education courses offered through cooperative arrangements approved by the state board for ~~vocational~~ career and technical education. The amount must be the same for mileage and per day payments as that provided in subdivisions a through c of subsection 1 of section 15.1-27-26.
2. A school district may not receive more than one per student payment for transportation of a student regardless of the frequency with which the student is transported during any one day.
3. Notwithstanding any other law, the superintendent of public instruction shall make the payments due a school district under this section directly to an area ~~vocational~~ career and technology center if requested to do so by the school district.

SECTION 69. AMENDMENT. Subsection 4 of section 15.1-27-37 of the North Dakota Century Code is amended and reenacted as follows:

4. For purposes of this section, the claim of a district may include proportionate expenditures made by the district to compensate individuals employed as teachers by the special education unit or the area ~~vocational~~ career and technology center to which the district belongs.

SECTION 70. AMENDMENT. Subsections 3 and 6 of section 19-03.1-23 of the North Dakota Century Code are amended and reenacted as follows:

3. For second or subsequent offenders, in addition to any other penalty imposed under this section, a person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:
 - a. Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or

within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public ~~vocational~~ career and technical education school is subject to an eight-year term of imprisonment.

- b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least eight years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.
6. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Except as provided in this subsection, any person who violates this subsection is guilty of a class C felony. If the person is in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public ~~vocational~~ career and technical education school, the person is guilty of a class B felony. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana is guilty of a class A misdemeanor. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.

SECTION 71. AMENDMENT. Subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A person who violates section 19-03.1-23 is subject to the penalties provided in subsection 2 if:
 - a. The offense involved the manufacture or distribution of a controlled substance in or on, or within one thousand feet [300.48 meters] of, the real property comprising a public or private elementary or secondary school, public ~~vocational~~ career and technical education school, or a public or private college or university;
 - b. The defendant was at least sixteen years of age at the time of the offense and the offense involved the delivery of a controlled substance to a minor; or
 - c. The offense involved:
 - (1) Fifty grams or more of a mixture or substance containing a detectable amount of heroin;
 - (2) Fifty grams or more of a mixture or substance containing a detectable amount of:

- (a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (b) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (c) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or
 - (d) Any compound, mixture, or preparation that contains any quantity of any of the substance referred to in subparagraphs a through c;
- (3) Five grams or more of a mixture or substance described in paragraph 2 which contains cocaine base;
 - (4) Ten grams or more of phencyclidine or one hundred grams or more of a mixture or substance containing a detectable amount of phencyclidine;
 - (5) One gram, one hundred dosage units, or one-half liquid ounce or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide;
 - (6) Forty grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide or ten grams or more of a mixture or substance containing a detectable amount of any analog of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;
 - (7) Fifty grams or more of a mixture or substance containing a detectable amount of methamphetamine;
 - (8) Ten grams, one hundred dosage units, or one-half liquid ounce or more of a mixture of substance containing a detectable amount of 3,4-methylenedioxy-N-methylamphetamine, $C_{11}H_{15}NO_2$;
 - (9) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of gamma-hydroxybutyrate or gamma-butyrolactone or 1,4 butanediol or any substance that is an analog of gamma-hydroxybutyrate;
 - (10) One hundred dosage units or one-half liquid ounce of a mixture or substance containing a detectable amount of flunitrazepam; or
 - (11) Five hundred grams or more of marijuana.

SECTION 72. AMENDMENT. Section 25-06-02 of the North Dakota Century Code is amended and reenacted as follows:

25-06-02. Duties and responsibilities of North Dakota vision services - school for the blind. Within the limits of legislative appropriation, North Dakota vision services - school for the blind shall:

1. Provide vision-specific services that include consultations, evaluations, information, training, and educational services, including instruction in orientation, mobility, braille, braille music, daily living skills, technology, ~~vocational~~ career and technical education training, and recreation.
2. Collect and distribute information on vision services and resources available in the state.
3. Coordinate loans of adaptive devices, equipment, and materials.
4. Maintain a data base of residents who are blind or have a visual impairment.
5. Facilitate collaboration with agencies and programs providing services to individuals who are blind or have a visual impairment.
6. Assist residents to access appropriate services, including services available from the vocational rehabilitation division, independent living centers, infant development programs, developmental disabilities programs, the state library, local education programs, and advocacy programs.

SECTION 73. AMENDMENT. Section 25-07-04 of the North Dakota Century Code is amended and reenacted as follows:

25-07-04. Qualifications for admission to school for deaf - Residents of state entitled to free education. Each applicant who is a resident of this state and who, because of hearing impairment, is unable to receive an education in the public schools, is entitled to receive an education in the school for the deaf at the expense of the state. The North Dakota school for the deaf serves deaf or hearing-impaired children from birth through age twenty-one. The North Dakota school for the deaf shall furnish application blanks upon request and no child will be admitted until application is completed and approved. Students enrolled must be furnished transportation by the school for the deaf as indicated in the student's individual education plan. All deaf or hearing-impaired children who are residents of the state are entitled to receive special education and related services based on a completed individual education program, which considers the academic, independent living skills, ~~vocational~~ career and technical education, recreational, and leisure needs of each child.

SECTION 74. AMENDMENT. Section 27-21-02 of the North Dakota Century Code is amended and reenacted as follows:

27-21-02. Division of juvenile services - Powers and duties. The division of juvenile services is the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts. Upon committing a child to the custody of the division of juvenile services, the juvenile court, law enforcement officers, and other public officials shall make available to the division of juvenile services all pertinent data in their possession with respect to the child. Upon taking custody or if authorized by the court prior to receiving custody of a child, the division of juvenile services shall process the child through such diagnostic testing and evaluation programs as may be necessary to determine the treatment

and rehabilitation which is in the best interest of the child and in the best interest of the state. In doing so, the division of juvenile services may utilize the psychological, addiction, psychiatric, ~~vocational~~ career and technical education, medical, and other diagnostic and testing services that are available, examine all the pertinent circumstances, and review the reasons for the child's commitment. Upon completion of the diagnostic testing and evaluation of a child committed to its custody, the division shall make disposition under subsection 1, 2, or 3 and inform the court of its disposition. Upon completion of the diagnostic testing and evaluation of a child not in its custody, the division shall develop and recommend to the juvenile court an individualized treatment and rehabilitation plan for the child. This plan must include recommendations for the disposition of the child as follows:

1. Placement in the care of the child's parent, relative, guardian, or in a foster home or suitable private institution licensed by the state for the care or treatment and rehabilitation of children;
2. Placement in the care of the North Dakota youth correctional center or in a ~~vocational~~ career and technical education, training, or other treatment and rehabilitation institution for children or young adults within this state; or
3. Placement in the care of a ~~vocational~~ career and technical education, training, or other treatment and rehabilitation institution for children or young adults in another state in the event that adequate facilities for the child's treatment and rehabilitation are not available within this state and the committing juvenile court concurs in the placement.

SECTION 75. AMENDMENT. Section 27-21-03 of the North Dakota Century Code is amended and reenacted as follows:

27-21-03. Temporary care. The division of juvenile services may, if other means are unavailable, place a child committed to its custody in the temporary care of the North Dakota youth correctional center, a ~~vocational~~ career and technical education, training, medical, psychiatric, psychological, or other institution suitable for children within this state for not more than sixty days, in order to provide for diagnostic testing and evaluation and other assessments pending disposition under section 27-21-02.

SECTION 76. AMENDMENT. Subsection 1 of section 27-21-06 of the North Dakota Century Code is amended and reenacted as follows:

1. The division of juvenile services ~~is hereby empowered to~~ may contract and make placements with the appropriate agencies or departments of other states in order that they may receive care of committed children for ~~vocational~~ career and technical education, training, or other treatment and rehabilitation purposes contemplated by this chapter. Before contracting with any agency or department of another state, the director of the division, or the director's designee, shall assess the facilities that are offered by such department or agency, and, after contracting, forward to the committing juvenile court a summary on the facilities that are furnished by such agency or department and such other information pertaining thereto as may reasonably be requested.

SECTION 77. AMENDMENT. Section 27-21-07 of the North Dakota Century Code is amended and reenacted as follows:

27-21-07. Report by caretaker to division of juvenile services. Any person, agency, department, or ~~vocational~~ career and technical education, training, or other treatment and rehabilitation institution, either within or outside of this state, that has received care of a child under this chapter, other than temporary care, shall:

1. Submit to the director of the division, in such form as the director may reasonably prescribe, a quarterly report of the progress of the child; and
2. Submit to the director of the division, in such form as the director may reasonably prescribe, any interim report of the progress of the child that the director deems necessary in the interest of the child.

Quarterly and interim reports must be made available to the committing juvenile court.

SECTION 78. AMENDMENT. Section 27-21-09 of the North Dakota Century Code is amended and reenacted as follows:

27-21-09. Cooperation with other agencies and departments of the state - Right to inspect facilities of state institutions - Right to examine children. The division of juvenile services shall cooperate with and receive the cooperation of the department of human services, the department of public instruction, the ~~board for vocational~~ department of career and technical education, the juvenile courts, the state department of health, and such other agencies and departments of the state as may be necessary to carry out the objectives of this chapter. The division of juvenile services may inspect at all reasonable times the facilities of those institutions within the state it is authorized to utilize under this chapter, and may examine any child it has placed in the care of such institution, and may contract with public and private agencies to provide services for them or to retain from them required services to meet the purpose and objective of this chapter.

SECTION 79. AMENDMENT. Section 34-05-01.3 of the North Dakota Century Code is amended and reenacted as follows:

34-05-01.3. Duties of commissioner of labor. The commissioner of labor shall:

1. Improve working conditions and living conditions of employees and advance their opportunities for profitable employment.
2. Foster, promote, and develop the welfare of both wage earners and industries in North Dakota.
3. Promote friendly and cooperative relations between employers and employees.
4. Cooperate with other state agencies to encourage the development of new industries and the expansion of existing industries.
5. Represent the state of North Dakota in dealings with the United States department of labor, with the federal mediation and conciliation service, and with the United States veterans' administration with respect to job training programs.

6. Acquire and disseminate information on the subjects connected with labor, relations between employers and employees, hours of labor, and working conditions.
7. Encourage and assist in the adoption of practical methods of ~~vocational~~ career and technical education training, retraining, and ~~vocational guidance~~ career development counseling.
8. Report biennially to the governor and to the legislative assembly concerning activities of the department of labor, including in such report recommendations for legislation deemed necessary or desirable to effectuate the purposes of this chapter.
9. Administer the provisions of chapter 34-06 relating to wages and hours, chapter 34-07 relating to child labor, and the provisions of chapter 34-12 relating to labor-management relations.
10. Perform such other duties as may be required by law.

SECTION 80. AMENDMENT. Section 34-06-15 of the North Dakota Century Code is amended and reenacted as follows:

34-06-15. Special license to employ at less than minimum wage. The commissioner may issue to an employee whose productive capacity for the work to be performed is impaired by physical or mental disability, or to any student or learner enrolled in a ~~vocational~~ career and technical education or related program, a special license authorizing the employment of that licensee at less than the minimum wage. The commissioner may also issue special licenses to community rehabilitation programs for the handicapped which engage in the occupation and responsibility of representing and placing for the purpose of training, learning, or employment of those employees whose productive capacity for the work to be performed is impaired by physical or mental disability. The commissioner shall issue such licenses under rules adopted by the commissioner.

SECTION 81. AMENDMENT. Subsection 1 of section 37-07.1-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "School" means any university, college, ~~vocational~~ career and technical education school, technical school, or postsecondary educational institution.

⁶⁴ **SECTION 82. AMENDMENT.** Section 40-57-02 of the North Dakota Century Code is amended and reenacted as follows:

40-57-02. "Project" and "municipality" defined. As used in this chapter, unless a different meaning clearly appears from the context, the term "municipality" includes counties as well as municipalities of the types listed in subsection 4 of section 40-01-01 and, in the case of parking projects, municipal parking authorities created pursuant to section 40-61-02; and the term "project" means any real property, buildings, and improvements on real property or the buildings thereon, and

⁶⁴ Section 40-57-02 was also amended by section 1 of Senate Bill No. 2388, chapter 349.

any equipment located on such real property or in such buildings, or elsewhere, or personal property which is used or useful in connection with a revenue-producing enterprise, or any combination of two or more such enterprises, engaged or to be engaged in:

1. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof.
2. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacture.
3. Providing hospital, nursing home, or other health care facilities and service.
4. Improvements or equipment used or to be used for the abatement or control of environmental pollution in connection with any new or existing revenue-producing enterprise.
5. Public ~~vocational~~ career and technical education.
6. Any other industry or business not prohibited by the constitution or laws of the state of North Dakota.

In no event, however, does the term "project" include those undertakings defined in chapter 40-35, with the exception of projects referred to in subsections 3, 4, and 5.

⁶⁵ **SECTION 83. AMENDMENT.** Subsection 3 of section 40-57-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Lease projects to any industrial or commercial enterprise or nonprofit corporation or to any school district for ~~vocational~~ career and technical education purposes, in such manner that rents to be charged for the use of such projects shall be fixed, and revised from time to time as necessary, so as to produce income and revenue sufficient to provide for the prompt payment of interest upon all bonds issued hereunder, to create a sinking fund to pay the principal of such bonds when due, and to provide for the operation, maintenance, insurance on, and depreciation of such projects, and any taxes thereon.

SECTION 84. AMENDMENT. Section 40-57.2-01 of the North Dakota Century Code is amended and reenacted as follows:

40-57.2-01. Cities and counties may enter into agreements for surveys for industrial development and ~~vocational~~ career and technical education and on-the-job training. The governing body of any city or county of this state is authorized in accordance with the provisions of this chapter to enter into contracts with any person, firm, association, corporation, or limited liability company for the purpose of obtaining site surveys and site development plans, structural and mechanical plans and surveys, market surveys, and similar plans and surveys

⁶⁵ Section 40-57-03 was also amended by section 2 of Senate Bill No. 2388, chapter 349.

relating to industrial development and plant location, design, construction, equipment, and operation. Similar contracts may be entered into by such political subdivisions in accordance with the provisions of this chapter for the providing of ~~vocational~~ career and technical education and on-the-job training for residents of this state in industries located within this state. Such agreements shall be entered into only with a financially and educationally reliable person, firm, association, corporation, or limited liability company that has been approved for such agreement by a local development organization located in such city or county and organized to encourage industrial and commercial development and growth.

SECTION 85. AMENDMENT. Section 40-57.2-04 of the North Dakota Century Code is amended and reenacted as follows:

40-57.2-04. City or county may make tax levy. Any city or county, after resolution by its governing body that the question be submitted to its electors shall upon approval of the question at a regular or special election by sixty percent of the qualified electors of the city or county voting in the election may levy a tax not exceeding the limitations in subsection 16 of section 57-15-06.7 and subsection 15 of section 57-15-10 for the purpose of providing funds for ~~vocational~~ career and technical education and on-the-job training services and surveys and otherwise implementing this chapter. No levy for a specific year shall be made if the balance in the fund remaining from levies in prior years is in excess of ten thousand dollars.

SECTION 86. 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. Any person desiring to take the examination to become a certified water well contractor shall first have completed a minimum of one-year apprenticeship or experience in water well drilling and construction under the direct supervision of a certified water well contractor or have completed a ~~vocational school~~ career and technical education program of at least one year in water well construction and shall make application to the board. Any person desiring to take the examination to become a certified water well pump and pitless unit installer shall first have completed a minimum of one-year apprenticeship or experience in water well pump and pitless unit installation under the direct supervision of a certified water well pump and pitless unit installer or have completed a ~~vocational school~~ career and technical education program of at least one year in water well pump and pitless unit installation. Any person desiring to take the examination to become a certified monitoring well contractor shall first have completed 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 ~~vocational school~~ 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. A person applying to take a certification examination shall pay to the board treasurer a nonrefundable examination fee in the amount of ten dollars. If upon examination the applicant is found to be qualified as a water well contractor or a water well pump and pitless unit installer, the board shall issue to 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.

⁶⁶ **SECTION 87. AMENDMENT.** Section 50-09-02.2 of the North Dakota Century Code is amended and reenacted as follows:

50-09-02.2. Assistance for adopted children with special needs.

Assistance provided under this chapter or chapter 50-24.1 after adoption to a child with special needs must be provided without regard to the income or resources of the adopting parents. Except as provided in this section, such assistance continues until the adopted child becomes eighteen years of age, is emancipated, or dies; the adoption is terminated; or a determination of ineligibility is made by the county agency, whichever occurs earlier. If sufficient funds are available, the county agency may continue assistance for an adopted child until the child reaches twenty-one years of age if the agency determines that the adopted child is a student regularly attending a secondary, postsecondary, or ~~vocational~~ career and technical education school in pursuance of a course of study leading to a diploma, degree, or gainful employment. Assistance provided to an adopted child must continue regardless of the residence of the adopting parents. A state or county agency may require, as a condition of receiving assistance under this chapter or chapter 50-24.1, that the adopting parents enter into a contract or agreement regarding the type of assistance to be received; the amount of assistance; the identity of the physical, mental, or emotional condition for which medical assistance is received; or any conditions for continued receipt of assistance. A child with special needs is a child legally available for adoptive placement whose custody has been awarded to the department or a county social service board and who is five years of age or older; under eighteen years of age with a physical, emotional, or mental handicap; a member of a minority; or a member of a sibling group.

SECTION 88. 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 ~~vocational~~ career and technical education needs.

SECTION 89. AMENDMENT. Section 52-02-02.1 of the North Dakota Century Code is amended and reenacted as follows:

52-02-02.1. Adult education and training - Grants to students. Job service North Dakota may make grants of up to five hundred dollars per person to Job Training Partnership Act eligible students enrolled in adult basic and secondary

⁶⁶ Section 50-09-02.2 was also amended by section 1 of Senate Bill No. 2036, chapter 412.

education programs and training programs for adults approved by job service North Dakota. No grants may be made unless federal funds received by the state for job training services as defined in the Job Training Partnership Act [Pub. L. 97-300; 96 Stat. 1361; 29 U.S.C. 1604] have been obligated. Job service may collect an administrative fee not to exceed ten percent of the amount of grants made under this section. Job service North Dakota shall, in cooperation with the superintendent of public instruction, the ~~board for vocational~~ department of career and technical education, and any other state agency providing or administering adult education services, coordinate the grant program established under this section. Job service North Dakota shall adopt rules to implement the grant program established under this section including rules regarding eligibility requirements and use of grant proceeds.

SECTION 90. AMENDMENT. Section 52-02-08 of the North Dakota Century Code is amended and reenacted as follows:

52-02-08. Bureau and advisory councils to take steps to stabilize employment. The bureau, with the advice and aid of its advisory councils, and through its appropriate divisions, shall take appropriate steps to:

1. Reduce and prevent unemployment.
2. Encourage and assist in the adoption of practical methods of ~~vocational career and technical education~~ training, retraining, and vocational guidance career development counseling.
3. Investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment.
4. Promote the reemployment of unemployed workers throughout the state in every other way that may be feasible.
5. Carry on and publish the results of investigations and research studies.

⁶⁷ **SECTION 91. AMENDMENT.** Section 52-08-12 of the North Dakota Century Code is amended and reenacted as follows:

52-08-12. (Effective July 1, 2003) Workforce training funds - Distribution. Within the limits of legislative appropriations, workforce training funds must be distributed by the state board for ~~vocational~~ career and technical education as follows:

1. During the first fiscal year of each biennium, the state board for ~~vocational~~ career and technical education shall distribute up to one-half of the total amount appropriated for the biennium. The funds must be divided among the institutions of higher education assigned primary responsibility for workforce training pursuant to business plans approved by the state board of higher education and filed annually with

⁶⁷ Section 52-08-12 was repealed by section 1 of Senate Bill No. 2109, chapter 445.

the state board for ~~vocational~~ career and technical education and the division of workforce development of the department of commerce.

2. To be eligible to receive state funding for the second fiscal year of each biennium, each institution of higher education assigned primary responsibility for workforce training must provide certification to the workforce development division of the department of commerce that at least fifty percent of the regional funds included in the approved business plan for the biennium have been received, or are pledged to be received, prior to the end of the biennium. These funds may not be distributed to an institution of higher education assigned primary responsibility for workforce training until the workforce development division notifies the state board for ~~vocational~~ career and technical education that the institution has met the requirements of this subsection.

SECTION 92. AMENDMENT. Subsection 2 of section 52-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Programs must be conducted in cooperation with appropriate state board for ~~vocational~~ career and technical education approved training providers and institutions.

SECTION 93. AMENDMENT. Section 52-09-08 of the North Dakota Century Code is amended and reenacted as follows:

52-09-08. Default in taxes - Interest - Action to collect - Levy of tax by political subdivisions. Taxes unpaid on the date on which they are due and payable, as prescribed by the bureau, must bear interest at the rate of one-half of one per centum per month from and after that date until payment plus accrued interest is received by the bureau; provided, that the bureau may prescribe fair and reasonable regulations pursuant to which interest does not accrue with respect to taxes required. The amount of interest imposed may not be less than five dollars. Interest collected pursuant to this section must be paid into the old-age and survivors' fund. A political subdivision, except a school district, a multidistrict special education board, or a center board of an area ~~vocational~~ career and technology center, shall levy a tax sufficient to meet its obligations under this chapter, up to a maximum levy not exceeding the limitation in section 57-15-28.1 or, for counties, the limitation in subsection 36 of section 57-15-06.7. Within the levy limitations set out in subsection 6 of section 57-15-28.1 and subsection 36 of section 57-15-06.7, the governing body of a county may levy a tax for comprehensive health care insurance employee benefit programs duly established by the governing body. Any obligations under this chapter over and above the amount raised by the maximum levy permitted in this section must be paid out of the general fund of the political subdivision. All payments by a school district for obligations incurred under this chapter must be made out of the school district's general fund established pursuant to section 57-15-14.2.

SECTION 94. AMENDMENT. Subsection 12 of section 54-10-14 of the North Dakota Century Code is amended and reenacted as follows:

12. Area ~~vocational~~ career and technology centers.

SECTION 95. AMENDMENT. Section 54-56-01 of the North Dakota Century Code is amended and reenacted as follows:

54-56-01. Children's services coordinating committee - Membership.

The children's services coordinating committee consists of the governor or a designee of the governor, the superintendent of public instruction, a representative of juvenile courts appointed by the chief justice of the supreme court, the executive director of the department of human services, the state health officer, the director of the department of corrections and rehabilitation, or a designee of the director of the department of corrections and rehabilitation, the director of ~~vocational~~ career and technical education, and a representative of the Indian affairs commission. The governor or the governor's designee shall act as chairperson.

⁶⁸ **SECTION 96. AMENDMENT.** Subsection 2 of section 54-59-17 of the North Dakota Century Code is amended and reenacted as follows:

2. The educational technology council consists of:
 - a. The chief information officer.
 - b. The superintendent of public instruction or the superintendent's designee.
 - c. The commissioner of higher education or the commissioner's designee.
 - d. A representative appointed by the state board for ~~vocational~~ career and technical education.
 - e. A representative appointed by the governor from a list of three nominees submitted by the North Dakota association of technology leaders.
 - f. A representative appointed by the governor from a list of three nominees submitted by the North Dakota council of educational leaders.
 - g. A representative appointed by the governor from a list of three nominees submitted by the North Dakota school boards association.
 - h. A representative appointed by the governor from a list of three nominees submitted by the North Dakota association of special education directors.
 - i. Two representatives of school districts, one of which has an enrollment in kindergarten through grade twelve of fewer than four hundred, appointed by the governor.
 - j. The director of technology for the department of public instruction.
 - k. A representative appointed by the governor from a list of three nominees submitted by the state association of non public schools.

⁶⁸ Section 54-59-17 was also amended by section 1 of House Bill No. 1444, chapter 504.

SECTION 97. AMENDMENT. Section 54-60-06 of the North Dakota Century Code is amended and reenacted as follows:

54-60-06. Commerce cabinet. The North Dakota commerce cabinet is created. The cabinet is composed of the directors of each of the department divisions and of the executive heads, or other authorized representatives, of the state board for ~~vocational career~~ and technical education, the state board of higher education, the Bank of North Dakota, the department of agriculture, the workers compensation bureau, the department of transportation, job service North Dakota, the game and fish department, and of any other state agency appointed by the commissioner. The commissioner is the chairman of the cabinet and shall determine which agencies are members of the cabinet. The cabinet shall:

1. Coordinate and communicate economic development and tourism efforts of the agencies represented.
2. Meet at times determined by the commissioner.
3. Develop and make available before each regular session of the legislative assembly a list that identifies economic development moneys included in budget requests of cabinet agencies.

⁶⁹ **SECTION 98. AMENDMENT.** Subsection 16 of section 57-15-06.7 of the North Dakota Century Code is amended and reenacted as follows:

16. A county levying a tax to provide for ~~vocational~~ career and technical education and on-the-job training services as provided in section 40-57.2-04 may levy a tax not exceeding one mill.

⁷⁰ **SECTION 99. AMENDMENT.** Subsection 15 of section 57-15-10 of the North Dakota Century Code is amended and reenacted as follows:

15. Taxes levied for the purpose of ~~vocational~~ career and technical education and on-the-job training services in accordance with section 40-57.2-04 may be levied in an amount not exceeding one mill.

SECTION 100. AMENDMENT. Subsections 1 and 2 of section 57-15-14.2 of the North Dakota Century Code are amended and reenacted as follows:

1. A school board of any school district may levy an amount sufficient to cover general expenses including the costs of the following:
 - a. Board and lodging for high school students as provided in section 15.1-30-04.
 - b. The teachers' retirement fund as provided in section 15-39.1-28.

⁶⁹ Section 57-15-06.7 was also amended by section 2 of House Bill No. 1207, chapter 95, section 16 of House Bill No. 1426, chapter 96, and section 3 of Senate Bill No. 2173, chapter 92.

⁷⁰ Section 57-15-10 was also amended by section 3 of House Bill No. 1207, chapter 95, and section 17 of House Bill No. 1426, chapter 96.

- c. Tuition for students in grades seven through twelve as provided in section 15.1-29-15.
- d. Special education program as provided in section 15.1-32-20.
- e. The establishment and maintenance of an insurance reserve fund for insurance purposes as provided in section 32-12.1-08.
- f. A final judgment obtained against a school district.
- g. The district's share of contribution to the old-age survivors' fund and matching contribution for the social security fund as provided by chapter 52-09 and to provide the district's share of contribution to the old-age survivors' fund and matching contribution for the social security fund for contracted employees of a multidistrict special education board.
- h. The rental or leasing of buildings, property, or classroom space. Minimum state standards for health and safety applicable to school building construction shall apply to any rented or leased buildings, property, or classroom space.
- i. Unemployment compensation benefits.
- j. The removal of asbestos substances from school buildings or the abatement of asbestos substances in school buildings under any method approved by the United States environmental protection agency and any repair, replacement, or remodeling that results from such removal or abatement, any remodeling required to meet specifications set by the Americans with Disabilities Act accessibility guidelines for buildings and facilities as contained in the appendix to 28 CFR 36, any remodeling required to meet requirements set by the state fire marshal during the inspection of a public school, and for providing an alternative education program as provided in section 57-15-17.1.
- k. Participating in cooperative ~~vocational~~ career and technical education programs approved by the state board.
- l. Maintaining a ~~vocational~~ career and technical education program approved by the state board and established only for that school district.
- m. Paying the cost of purchasing, contracting, operating, and maintaining schoolbuses.
- n. Establishing and maintaining school library services.
- o. Equipping schoolbuses with two-way communications and central station equipment and providing for the installation and maintenance of such equipment.
- p. Establishing free public kindergartens in connection with the public schools of the district for the instruction of resident children below school age during the regular school term.

- q. Establishing, maintaining, and conducting a public recreation system.
 - r. The district's share of contribution to finance an interdistrict cooperative agreement authorized by section 15.1-09-40.
2. This limitation does not apply to mill levies pursuant to subdivisions a, c, f, and j of subsection 1. If a school district maintained a levy to finance either its participation in a cooperative ~~vocational career and technical~~ education program or its sponsorship of single-district ~~vocational career and technical~~ education programs prior to July 1, 1983, and the district discontinues its participation in or sponsorship of those ~~vocational career and technical~~ education programs, that district must reduce the proposed aggregated expenditure amount for which its general fund levy is used by the dollar amount raised by its prior levy for the funding of those programs.

SECTION 101. AMENDMENT. Section 57-15-17 of the North Dakota Century Code is amended and reenacted as follows:

57-15-17. Disposition of building fund tax. Revenue raised for building purposes shall be disposed of as follows:

1. a. All revenue accruing from appropriations or tax levies for a school building fund together with such amounts as may be realized for building purposes from all other sources must be placed in a separate fund known as a school building fund and must be deposited, held, or invested in the same manner as the sinking funds of such school district or in the purchase of shares or securities of federal or state-chartered savings and loan associations within the limits of federal insurance.
- b. The funds may only be used for the following purposes:
 - (1) The erection of new school buildings or facilities, or additions to old school buildings or facilities, or the making of major repairs to existing buildings or facilities, or improvements to school land and site. For purposes of this paragraph, facilities may include parking lots, athletic complexes, or any other real property owned by the school district.
 - (2) The payment of rentals upon contracts with the state board of public school education.
 - (3) The payment of rentals upon contracts with municipalities for ~~vocational career and technical~~ education facilities financed pursuant to chapter 40-57.
 - (4) Within the limitations of school plans as provided in subsection 2 of section 57-15-16.
 - (5) The payment of principal, premium, if any, and interest on bonds issued pursuant to subsection 7 of section 21-03-07.

- (6) The payment of premiums for fire and allied lines, liability, and multiple peril insurance on any building and its use, occupancy, fixtures, and contents.
 - c. The custodian of the funds may pay out the funds only upon order of the school board, signed by the president and the business manager of the school district. The order must recite upon its face the purpose for which payment is made.
2. Any moneys remaining in a school building fund after the completion of the payments for any school building project which has cost seventy-five percent or more of the amount in such building fund at the time of letting the contracts therefor shall be returned to the general fund of the school district upon the order of the school board.
3. The governing body of any school district may pay into the general fund of the school district any moneys which have remained in the school building fund for a period of ten years or more, and such district may include the same as a part of its cash on hand in making up its budget for the ensuing year. In determining what amounts have remained in said fund for ten years or more, all payments which have been paid from the school building fund for building purposes shall be considered as having been paid from the funds first acquired.
4. Whenever collections from the taxes levied for the current budget and other income are insufficient to meet the requirements for general operating expenses, a majority of the governing body of a school district may transfer unobligated funds from the school building fund into the general fund of the school district if the school district has issued certificates of indebtedness equal to fifty percent of the outstanding uncollected general fund property tax. No school district may transfer funds from the school building fund into the general fund for more than two years.

⁷¹ **SECTION 102. AMENDMENT.** Subdivision m of subsection 1 of section 57-38-01.2 of the North Dakota Century Code is amended and reenacted as follows:

- m. Reduced by the amount of interest received during that taxable year on a contract for deed on the sale of eighty or more acres [32.37 or more hectares] of agricultural land to a beginning farmer. The contract for deed must extend for not less than ten years and have an annual interest rate equal to or less than the minimum rate allowed by the internal revenue service before interest is imputed. In order for an individual, estate, or trust to qualify for this reduction, the taxpayer must obtain a statement from the buyer stating that the buyer meets all requirements of the beginning farmer definition, together with such other information as the state tax commissioner may require. The value placed on any real property located in North Dakota and owned by the buyer must be the amount listed as the true and full value on the most recent real

⁷¹ Section 57-38-01.2 was also amended by section 1 of Senate Bill No. 2367, chapter 526, and section 3 of Senate Bill No. 2099, chapter 529.

estate tax statement for that particular piece of property. In determining the net worth of any person, including the person's dependents and spouse, if any, for purposes of this subdivision, the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings may not be included. This statement must be filed along with the income tax return. For the purposes of this subdivision, "beginning farmer" means any person who is:

- (1) A resident of this state.
- (2) Receiving more than one-half of that person's gross annual income from farming, unless the person initially commences farming during the tax year for which an adjustment will be claimed under this subdivision.
- (3) Intending to use any farmland to be purchased or rented for agricultural purposes.
- (4) Except for contracts for deed entered into prior to July 1, 1985, having adequate training by education in the type of farming operation which the person wishes to begin through satisfactory participation in the adult farm management education program of the state board for ~~vocational~~ career and technical education or an equivalent program approved by the agriculture commissioner.
- (5) Having, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars.

SECTION 103. AMENDMENT. Subsection 2 of section 57-38-67 of the North Dakota Century Code is amended and reenacted as follows:

2. "Beginning farmer" means any person who is:
 - a. A resident of this state;
 - b. Receiving more than half of that person's gross annual income from farming, unless the person initially commences farming during the tax year for which a deduction will be claimed under sections 57-38-67 through 57-38-70;
 - c. Intending to use any farmland to be purchased or rented for agricultural purposes;
 - d. Except for tax-exempt transactions entered into prior to July 1, 1985, having adequate training by education in the type of farming operation which the person wishes to begin on the purchased or rented land referred to in subdivision c through satisfactory participation in the adult farm management education program of the state board for ~~vocational~~ career and technical education or an equivalent program approved by the agriculture commissioner; and

- e. Having, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.

SECTION 104. REPEAL. Section 15-20.1-10 of the North Dakota Century Code is repealed.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 139

HOUSE BILL NO. 1068

(Representative R. Kelsch)

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

ACADEMIC CREDENTIAL FALSIFICATION

AN ACT to create and enact three new sections to chapter 15-20.4 of the North Dakota Century Code, relating to the issuance, manufacture, and use of false academic degrees or certificates; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-20.4 of the North Dakota Century Code is created and enacted as follows:

Unlawful to issue, manufacture, or use false academic degrees - Penalty.

1. It is unlawful for a person to knowingly issue or manufacture a false academic degree. A person that violates this subsection is guilty of a class C felony.
2. a. It is unlawful for an individual to knowingly use or claim to have a false academic degree:
 - (1) To obtain employment;
 - (2) To obtain a promotion of higher compensation in employment;
 - (3) To obtain admission to an institution of higher learning; or
 - (4) In connection with any business, trade, profession, or occupation.
- b. An individual who violates this subsection is guilty of a class A misdemeanor.
3. As used in this section, "false academic degree" means a document such as a degree or certification of completion of a degree, coursework, or degree credit, including a transcript, that provides evidence or demonstrates completion of a course of instruction or coursework that results in the attainment of a rank or level of associate or higher which is issued by a person that is not a duly authorized institution of higher learning.
4. As used in this section, "duly authorized institution of higher learning" means an institution that:
 - a. Has accreditation recognized by the United States secretary of education or has the foreign equivalent of such accreditation;

- b. Has an authorization to operate under this chapter;
- c. Operates in this state and is exempt from this chapter under section 15-20.4-02;
- d. Does not operate in this state and is:
 - (1) Licensed by the appropriate state agency; and
 - (2) An active applicant for accreditation by an accrediting body recognized by the United States secretary of education; or
- e. Has been found by the state board for career and technical education to meet standards of academic quality comparable to those of an institution located in the United States that has accreditation recognized by the United States secretary of education to offer degrees of the type and level claimed.

SECTION 2. A new section to chapter 15-20.4 of the North Dakota Century Code is created and enacted as follows:

Unlawful to use degree or certificate when coursework not completed - Penalty.

1. An individual may not knowingly use a degree, certificate, diploma, transcript, or other document purporting to indicate that the individual has completed an organized program of study or completed courses when the individual has not completed the organized program of study or the courses as indicated on the degree, certificate, diploma, transcript, or document:
 - a. To obtain employment;
 - b. To obtain a promotion or higher compensation in employment;
 - c. To obtain admission to an institution of higher learning; or
 - d. In connection with any business, trade, profession, or occupation.
2. An individual who violates this section is guilty of a class A misdemeanor.

SECTION 3. A new section to chapter 15-20.4 of the North Dakota Century Code is created and enacted as follows:

Consumer protection - False academic degrees. The state board for career and technical education, in collaboration with the North Dakota university system, shall provide via internet web sites, information to protect students, businesses, and others from persons that issue, manufacture, or use false academic degrees.

Approved April 14, 2003
Filed April 14, 2003

CHAPTER 140

SENATE BILL NO. 2057

(Government and Veterans Affairs Committee)
(At the request of the Teachers' Fund for Retirement)

TFFR ADMINISTRATION

AN ACT to create and enact a new section to chapter 15-39.1 of the North Dakota Century Code, relating to the purchase of service credit by employers under the teachers' fund for retirement; and to amend and reenact subsection 9 of section 15-39.1-04, sections 15-39.1-10.3, 15-39.1-10.6, 15-39.1-15, 15-39.1-16, 15-39.1-18, 15-39.1-19.1, and 15-39.1-20, and subsection 11 of section 15-39.1-24 of the North Dakota Century Code, relating to definition of salary, dual membership, benefit limitations, withdrawal, benefit options, disability retirement, discontinuance of retirement benefits, and acceptance of rollovers under the teachers' fund for retirement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷² **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. "Salary" with respect to a member who begins participation in the plan under former chapter 15-39, or chapter 15-39.1 or 15-39.2 after June 30, 1996, 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), as amended by the Omnibus Budget Reconciliation Act of 1993 [Pub. L. 103-66; 107 Stat. 312]. The annual compensation limit is one hundred fifty thousand dollars, as adjusted by the commissioner of the internal revenue service for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B). A salary maximum is not applicable to members whose participation began before July 1, 1996. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave, housing allowances, transportation expenses, early retirement incentive pay, severance pay, medical insurance, workers' compensation benefits, disability insurance premiums or benefits,

⁷² Section 15-39.1-04 was also amended by section 42 of House Bill No. 1183, chapter 138.

~~referee pay, busdriver pay, janitorial pay, or salary received by a member in lieu of previously employer-provided fringe benefits.:~~

- 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 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, workers' compensation, 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.

SECTION 2. AMENDMENT. Section 15-39.1-10.3 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-10.3. Multiple plan membership - Eligibility for benefits - Amount of benefits.

1. a. For the purpose of determining vesting of rights and eligibility for benefits under this chapter, a teacher's years of service credit is the total of the years of service credit earned in the fund and the years, with twelve months of compensation equal to a year, of service employment earned in any number of the following alternate plans:
 - (1) The public employees retirement system.
 - (2) The highway patrolmen's retirement system.

Service credit may not exceed one year of service in any fiscal year in determining vesting and benefit eligibility.

- b. If a teacher terminates eligible employment under the fund, if that teacher has not received a refund of member ~~assessments~~ contributions, and if that teacher begins eligible employment in a plan described in paragraph 1 or 2 of subdivision a, that teacher may elect to remain an inactive member of the fund without refund

of ~~assessments~~ contributions. The board shall terminate the inactive status of a teacher under this subdivision if the teacher gains eligible employment under this chapter or if the teacher terminates eligible employment under a plan described in paragraph 1 or 2 of subdivision a.

- c. A 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, calculated by using the certified salaries of the retirement plan of last membership in the computation of final average monthly salary. The board shall calculate benefits for a teacher under this section by using only those years of service credit earned under this chapter. A teacher 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) 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) 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. If a teacher, who is a member of the eligible to participate in this fund, is also employed in any position where membership in the public employees eligible to participate in an alternate retirement system is required, then for purposes of current employment the teacher is a member of the retirement system in which the teacher has the most years of service credit. If the teacher has an equal amount of service credit in both the fund and the public employees retirement system, the teacher is a member of the public employees retirement system. The board of trustees of the teachers' fund for retirement and the state retirement board shall jointly certify to the appropriate employers of the teacher the fact of the beginning and termination of eligibility for dual membership in the respective retirement systems and the retirement system to which the teacher is required to be a member under this subsection, the employee is a member of the teachers' fund for retirement for duties covered under this fund, and the employee is also a member of the public employees retirement system or highway patrolmen's retirement system for duties covered by those alternate retirement systems. The employers upon receipt of this certification shall pay over to that retirement system the member assessments and employer contributions at the rates currently existing for that the applicable system. If the teacher is required to be a member of the public employees retirement system, the board, at the teacher's election, shall designate the teacher an inactive member of the fund without refund of the teacher's accumulated assessments with interest until the teacher ceases the employment which requires membership in both the fund and the public employees retirement system.

b. If a teacher described in subdivision a was employed prior to August 1, 2003, and has dual member rights, the teacher may elect to begin participation in the alternate plan pursuant to the plan provisions on August 1, 2003, or may continue participation pursuant to the plan provisions in effect on July 31, 2003. A plan participation election is required by five p.m. on October 31, 2003. If an election is not received by the retirement plan, the participation and benefit calculation requirements of this chapter as of July 31, 2003, continue to be in effect for the teacher.

3. Under rules adopted by the board, an individual whose service credit was canceled when that individual received a refund of assessments at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 1 or 2 of subdivision a of subsection 1, repurchase that service credit that was canceled.

SECTION 3. 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 1, 2003, 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, 2003.

SECTION 4. 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 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 credit for prior teaching by making the required payment. The required payment, if made within five years of returning to teach, is the amount that was withdrawn with interest. In all other cases, the purchase cost must be on an actuarial equivalent basis. ~~The fund may accept rollovers from other qualified plans under rules adopted by the board for the repurchase of refunds previously taken, but only to the extent the transfer is a rollover contribution that meets the requirements of section 408 of the Internal Revenue Code.~~

SECTION 5. AMENDMENT. Section 15-39.1-16 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-16. Option of teachers eligible to receive annuities. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:

Option one. Upon the death of the teacher, the reduced retirement allowance must be continued throughout the life of, and paid to, ~~the person as the teacher has nominated by written designation filed with the board~~ teacher's designated beneficiary named at the time of retirement. If the person designated to receive the teacher's reduced retirement allowance predeceases the teacher, the reduced retirement allowance must be converted to a single life retirement annuity under which benefit payments, if the person designated died prior to July 1, 1989, must begin on July 1, 1989, or, if the person designated dies on or after July 1, 1989, must begin on the first day of the month following the death of the person designated.

Option two. Upon the death of the teacher, one-half of the reduced retirement allowance must be continued throughout the life of, and paid to, the person as the teacher has nominated by written designation filed with the board teacher's designated beneficiary named at the time of retirement. If the person designated to receive the teacher's reduced retirement allowance predeceases the teacher, the reduced retirement allowance must be converted to a single life retirement annuity under which benefit payments, if the person designated died prior to July 1, 1989, must begin on July 1, 1989, or, if the designated beneficiary dies on or after July 1, 1989, must begin on the first day of the month following the death of the person designated.

Option three. Upon the death of the teacher within ~~five~~ twenty years of the commencement of annuity payments, the payments must be continued for the remainder of the ~~five-year~~ twenty-year period to the ~~person as the teacher has nominated by written designation filed with the board~~ teacher's designated beneficiary. This payment option is available to teachers who retire after July 31, 2003.

Option four. Upon the death of the teacher within ten years of the commencement of annuity payments, the payments must be continued for the remainder of the ten-year period to the ~~person as the teacher has nominated by written designation filed with the board~~ teacher's designated beneficiary.

Option five. Level retirement income with social security option, which is available to teachers retiring before social security is payable.

Option six. Partial lump sum distribution option. A member who is eligible for an unreduced service retirement annuity under section 15-39.1-10 and who retires after July 31, 2003, may make a one-time election to receive a portion of the retirement annuity paid in a lump sum distribution upon retirement, pursuant to rules adopted by the board.

1. The eligible member may select a standard service retirement annuity or an optional service retirement annuity described in this section, together with a partial lump sum distribution. The partial lump sum distribution option is not available to members who have selected option five, the level income retirement option. This option is not available to disabled members or beneficiaries of deceased members. The partial lump sum distribution option may be elected only once by a member and may not be elected by a retiree.
2. The amount of the partial lump sum distribution under this section is twelve months of a standard service retirement annuity computed under section 15-39.1-10 and payable at the same time that the first monthly payment of the annuity is paid.
3. The service retirement annuity selected by the member must be actuarially reduced to reflect the partial lump sum distribution option selected by the member.
4. Before a retiring member selects a partial lump sum distribution under this section, the fund shall provide a written notice to the member of the amount by which the member's annuity will be reduced because of the selection.

The amount of the reduced retirement allowance payable upon the exercise of any of these options must be computed upon an actuarial basis through the use of standard actuarial tables and based upon the ages of the teacher and the teacher's designated beneficiary. A member's spouse, if designated as beneficiary, must consent in writing to the member's choice of benefit payment option for any benefit payments commencing after June 30, 1999. The board may rely on the member's representations about that person's marital status in determining the member's marital status. The spouse's written consent must be witnessed by a notary or a plan representative. If the spouse does not consent, or cannot be located, the member's annuity benefit must be paid using option two, the fifty percent joint and survivor option.

SECTION 6. AMENDMENT. Section 15-39.1-18 of the North Dakota Century Code is amended and reenacted as follows:

15-39.1-18. Disability retirements.

1. Any member may also retire and receive a disability annuity if, after a period of at least one year of service as a member in this state, the member suffers from total disability as determined by the board.
2. The amount of the disability annuity is the greater of the amount computed by the retirement formula in section 15-39.1-10 without consideration of age or the amount computed by that formula without consideration of age but assuming the member had twenty years of credited service. A member determined eligible for a disability annuity under this section may elect to receive an annuity under any of the options allowed in section 15-39.1-16, except the level retirement income with social security option or the partial lump sum option.
3. The disability annuity continues until the death or prior recovery of the disabled annuitant. The board shall ascertain by periodic medical examinations the continued disability status of a disabled annuitant.
4. If a disabled annuitant recovers and returns to active teaching, that annuitant is entitled to the retirement benefit credits which the annuitant earned prior to the time of disablement, and the credits which the annuitant earned after returning to active teaching must be added to those earned prior to disablement.

SECTION 7. AMENDMENT. Section 15-39.1-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**15-39.1-19.1. (Effective from January 29, 2001, through July 31, 2005)
Annuities discontinued on resumption of teaching.**

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. Except as otherwise provided in this section, a retired member may then return to covered employment for a maximum of seven hundred hours per year 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 ~~seven hundred-hour restriction~~. ~~The board may waive this restriction in emergency situations~~ annual hour limit. Professional development and extracurricular duties do not apply to the annual hour limit. Should the retired member's employment exceed the ~~seven hundred-hour maximum~~ 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. Except as otherwise provided in this section, the retired member's monthly benefit must be discontinued the first of the month following the date the member reaches the ~~seven hundred-hour maximum~~ annual hour limit. A retired member who returns to teaching shall pay the required ~~assessments~~ contributions on those earnings received by the retired member after reaching the seven hundred-hour maximum annual hour limit. The employer shall pay the required contributions in a like manner.

2. A retired member may return to teaching for up to one year without losing any benefits provided at least fifty percent of the salary earned by that person is placed in a school district's educational foundation or a private educational foundation. Employee and employer ~~assessments~~ contributions under this arrangement must be paid by the person's employer. Assessments Contributions must be paid on the total salary earned by the retired member without regard to the amount of money placed in an educational foundation. A retired member reemployed under the provisions of this subsection must be treated as retired for all other purposes under this chapter. Notwithstanding subdivision a of subsection 3, a retired member may not earn any additional service during the period of reemployment. The member's benefits may not be adjusted to reflect changes in the member'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, additional benefits normally available to an active member, such as disability benefits, are not available to a retired member reemployed under this subsection, and refunds may not be made to a retired member at the end of that person's period of reemployment. For purposes of this subsection, a school district's educational foundation must be a nonprofit or charitable organization exempt from federal income taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)].
3. Upon the retired teacher's subsequent retirement, the member's benefit must be resumed as follows:

- a. If the teacher subsequently retires with less than two years of additional earned credited service, the teacher's ~~assessments~~ contributions paid to the fund must be refunded in accordance with section 15-39.1-20 and the teacher is entitled to receive the discontinued annuity, plus any postretirement benefit adjustments granted during the period of reemployment, the first day of the month following the teacher's re-retirement.
- b. If the teacher subsequently retires with two or more but less than five years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity, plus an additional annuity computed according to this chapter based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity computed according to this chapter based on total years of service credit earned during both employment periods offset by the actuarial value of payments already received. The new annuity is payable the first day of the month following the member's re-retirement.
- c. If the teacher subsequently retires with five or more years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity plus an additional annuity based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity based on all years of service computed under subsection 2 of section 15-39.1-10. The new annuity is payable the first day of the month following the member's re-retirement.

(Effective after July 31, 2005) Annuities discontinued on resumption of teaching.

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 ~~for a maximum of seven hundred hours per year~~ 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 ~~seven hundred-hour restriction~~. ~~The board may waive this restriction in emergency situations~~ annual hour limit. Professional development and extracurricular duties do not apply to the annual hour limit.

Should the retired member's employment exceed the ~~seven hundred-hour maximum~~ 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 ~~seven hundred-hour maximum~~ annual hour limit.

A retired member who returns to teaching shall pay the required ~~assessments~~ contributions on those earnings received by the retired member after reaching the seven hundred-hour maximum annual hour limit. The employer shall pay the required contributions in a like manner.

2. Upon the retired teacher's subsequent retirement, the member's benefit must be resumed as follows:
 4. a. If the teacher subsequently retires with less than two years of additional earned credited service, the teacher's ~~assessments~~ contributions paid to the fund must be refunded in accordance with section 15-39.1-20 and the teacher is entitled to receive the discontinued annuity, plus any postretirement benefit adjustments granted during the period of reemployment, the first day of the month following the teacher's re-retirement.
 2. b. If the teacher subsequently retires with two or more but less than five years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity, plus an additional annuity computed according to this chapter based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity computed according to this chapter based on total years of service credit earned during both employment periods offset by the actuarial value of payments already received. The new annuity is payable the first day of the month following the member's re-retirement.
 3. c. If the teacher subsequently retires with five or more years of additional earned credited service, the retired person's annuity is the greater of the sum of the discontinued annuity plus an additional annuity based upon years of service and average salaries earned during the period of reemployment plus any postretirement benefit adjustments granted during the period of reemployment, or a recalculated annuity based on all years of service computed under subsection 2 of section 15-39.1-10. The new annuity is payable the first day of the month following the member's re-retirement.

SECTION 8. 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. 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 1, 2003.

SECTION 9. AMENDMENT. Subsection 11 of section 15-39.1-24 of the North Dakota Century Code is amended and reenacted as follows:

11. The fund may accept rollovers from other qualified plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirements of section 408 of the Internal Revenue Code eligible rollovers, direct rollovers, and trustee-to-trustee transfers from eligible retirement plans specified under Internal Revenue Code section 402(c)(8)(B) to purchase refunded service credit under section 15-39.1-15 and to purchase additional service credit under section 15-39.1-24. The board shall adopt rules to ensure that the rollovers and transfers comply with the requirements of the Internal Revenue Code and internal revenue service regulations. The total amount rolled over or transferred into the fund may not exceed the amount due to purchase service credit.

SECTION 10. A new section to chapter 15-39.1 of the North Dakota Century Code is created and enacted as follows:

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-seven; 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.
4. The purchase must be completed before the member's retirement.
5. The employer may purchase a maximum of three 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.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 141

SENATE BILL NO. 2282

(Senator Kilzer)
(Representative Svedjan)

MEDICAL CENTER COUNCIL AND LOANS

AN ACT to amend and reenact sections 15-52-03, 15-52-04, 15-52-16, 15-52-17, 15-52-18, and 15-52-20 of the North Dakota Century Code, relating to the membership and duties of the medical center advisory council and medical center loans; and to repeal sections 15-52-19 and 15-52-24 of the North Dakota Century Code, relating to medical center loan payments and loan insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷³ **SECTION 1. AMENDMENT.** Section 15-52-03 of the North Dakota Century Code is amended and reenacted as follows:

15-52-03. Medical center advisory council - Members, terms, meetings.

In order to

1. To assure the proper coordination and integration of the North Dakota state medical center with all other health and welfare activities of the state, a permanent medical center advisory council is hereby established to advise, consult, and make recommendations to the university administration, and to the several agencies represented on the council concerning the program of the North Dakota state medical center, the adaptation thereof of the medical center to the needs of the state and to the requirements and facilities of the several agencies involved, and the use of the North Dakota state medical center and its facilities by the various institutions and agencies of the state and its political subdivisions.
2. The council ~~shall consist~~ consists of fourteen members: ~~two~~
 - a. Two members of the senate and two members of the house of representatives to be named by the governor; one to be named by and from the membership of selected by the chairman of the legislative council;
 - b. One member selected by each of the following: the
 - (1) The department of human services; the
 - (2) The state board of higher education, or such boards or departments as shall succeed them or any of them; the

⁷³ Section 15-52-03 was also amended by section 14 of Senate Bill No. 2015, chapter 36.

- (3) The state health officer of the state department of health; ~~the~~
- (4) The North Dakota medical association; ~~the~~
- (5) The North Dakota hospital healthcare association; ~~the and~~
- (6) The veterans administration hospital in Fargo; ~~the house of representatives, appointed by the speaker; and the senate, appointed by the president of the senate; with the remaining four members to be~~

c. One member selected by the dean of the university of North Dakota medical school from each of the four campus areas of the medical school with headquarters in Bismarck, Fargo, Grand Forks, and Minot. One member from each quadrant will be selected by the board to serve a three-year term with a two-term limit. The initial appointments must be staggered.

- 3. The representatives named by the state agencies and boards ~~above referred to~~ must be selected to serve as members of the medical center advisory council for periods of at least one year, but ~~in no instance~~ may ~~they~~ not serve longer than their term of office on the public agency. The representatives from the North Dakota state medical association and the North Dakota hospital healthcare association ~~shall~~ serve a term of three years or until their successors are named and qualified. ~~The two members appointed by the governor shall serve for three-year terms as representatives of the public at large.~~
- 4. The council shall name its own chairman and the dean of the university of North Dakota medical school shall serve as executive secretary ~~thereof of the council~~. The council shall meet not less than twice each year, and, from time to time, on its own motion or upon request of the university administration, to consider plans and programs of action for the North Dakota state medical center and make its recommendations ~~thereon~~ to the several agencies of the state and ~~its~~ political subdivisions involved and to the legislative assembly.

SECTION 2. AMENDMENT. Section 15-52-04 of the North Dakota Century Code is amended and reenacted as follows:

15-52-04. Duties of council. The medical center advisory council shall study, consider, and formulate plans for facilitating and implementing, through ~~the instrumentality of~~ the North Dakota state medical center, a unified program for the improvement and maintenance of the health of the people of ~~North Dakota~~ the state in all of its phases, ~~and such.~~ The study must include specifically ways and means of bringing about the complete training of adequate numbers of qualified physicians and surgeons for the people of North Dakota the state, both in the general practice of medicine and surgery and the field of public health, the training of nurses and public health nurses, of allied health professionals, of sanitary engineers, of public health administrators, and all other personnel concerned with the improvement and preservation of the health of the people of North Dakota this state.

SECTION 3. AMENDMENT. Section 15-52-16 of the North Dakota Century Code is amended and reenacted as follows:

15-52-16. Qualifications of loan applicants. An applicant is deemed qualified only if the applicant:

1. Has been a resident of ~~the this~~ state of North Dakota at least one year ~~prior to~~ before the date of entering medical school or dental school;
2. Has successfully completed the first year of the curriculum in medicine at the university of North Dakota or has successfully completed the first year of the curriculum in dentistry in a ~~qualified and reputable~~ an accredited dental school; and
3. Can present to the university satisfactory proof that the applicant ~~has been accepted~~ is enrolled as a student in the second, third, or fourth year of a ~~qualified and reputable four-year~~ school of medicine accredited by the liaison committee on medical education or a school of dentistry accredited by the commission on dental accreditation, or will be ~~so accepted~~ enrolled upon payment of tuition.

SECTION 4. AMENDMENT. Section 15-52-17 of the North Dakota Century Code is amended and reenacted as follows:

15-52-17. Loan investigations. The university shall make a careful investigation to ascertain the truth of all matters set forth in applications received by it, ~~and for that purpose may propound such examinations and questions for each applicant as it deems proper. The investigation must include~~ including a study of the ability of the applicant or the applicant's parents ~~to pay the applicant's expenses at the university of North Dakota school of medicine or an out-of-state medical or dental school, and preference~~ financial need of the applicant. Preference must be given to qualified applicants ~~who, or whose parents, are unable to pay the applicant's expenses at such medical or dental school~~ with demonstrated financial need.

SECTION 5. AMENDMENT. Section 15-52-18 of the North Dakota Century Code is amended and reenacted as follows:

15-52-18. Amount of loans. Loans may be granted to qualified applicants by the university in amounts not in excess of ~~four six~~ six thousand dollars each year for the purpose of completing the second, third, and fourth year of medical or dental study in a ~~qualified and reputable four-year~~ an accredited school of medicine or dentistry.

SECTION 6. AMENDMENT. Section 15-52-20 of the North Dakota Century Code is amended and reenacted as follows:

15-52-20. Loan conditions. ~~Loans~~ A loan granted by the university under section 15-52-10 and sections 15-52-15 through 15-52-28 ~~are to~~ must be upon the condition that the full amount ~~thereof~~ of the loan must be repaid in cash with ~~interest~~ not to exceed six percent ~~interest~~ annually from the date of each payment pursuant to a loan agreement, ~~the~~ The medical center advisory council may annually establish an interest rate at a level lower than six percent. The repayment to ~~must~~ be in yearly installments on a schedule set by the university ~~and~~ with the first installment becoming due and payable one year from the date on which the applicant begins practice, but ~~under no circumstances to~~ may not exceed five years from the date of graduation or one year from the date of graduation from a dental school if a dental student.

SECTION 7. REPEAL. Sections 15-52-19 and 15-52-24 of the North Dakota Century Code are repealed.

Approved April 18, 2003

Filed April 18, 2003

CHAPTER 142

HOUSE BILL NO. 1125

(Education Committee)

(At the request of the State Board of Higher Education)

STATE SCHOLARS PROGRAM

AN ACT to amend and reenact subsection 1 of section 15-62.2-00.1 and sections 15-62.2-03.2 and 15-62.2-03.3 of the North Dakota Century Code, relating to the state scholars program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 15-62.2-00.1 of the North Dakota Century Code is amended and reenacted as follows:

1. "Eligible candidate" means a graduate of a high school in this state or a resident of this state for tuition purposes whose assessment composite scores on the test of academic achievement administered by the American college testing program place the student in at least the ninety-fifth percentile of all students taking the test by ~~November~~ July first of the year preceding ~~January~~ first of the year in which the student is applying for a scholarship, and who ranks in the upper twentieth percentile of the student's high school class.

SECTION 2. AMENDMENT. Section 15-62.2-03.2 of the North Dakota Century Code is amended and reenacted as follows:

15-62.2-03.2. Reapplication eligibility - Amount of scholarships - Duration. Scholars are eligible to ~~reapply~~ for scholarships for subsequent academic years provided they maintain a ~~3.6~~ at least a 3.50 cumulative grade point average based upon a 4.0 grading system. ~~Scholars entering the scholars program during or after the 1994 fall semester are eligible to reapply for scholarships for subsequent academic years provided they maintain a 3.50 grade point average.~~ The amount of the scholarship must equal the tuition charged at the scholar's eligible institution ~~but may, not to exceed the amount charged for highest resident undergraduate tuition at the state universities rate in the North Dakota university system.~~ In addition, a state scholar may receive an annual stipend of not more than two thousand dollars. A state scholar may receive a scholarship for not more than eight semesters or twelve quarters of undergraduate study, or until the attainment of the student's baccalaureate degree, whichever comes first.

⁷⁴ **SECTION 3. AMENDMENT.** Section 15-62.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

⁷⁴ Section 15-62.2-03.3 was also amended by section 1 of Senate Bill No. 2200, chapter 143.

15-62.2-03.3. Selection of scholars. All eligible candidates must be ranked by their composite scores on the test of academic achievement administered by the American college testing program. If two or more eligible students have the same scores, they must be ranked by their high school class rank calculated on a percentile basis. Scholarships must be offered to students in descending order according to this ranking until available funds have been expended, or until the pool of eligible applicants has been exhausted. ~~Scholarships must be awarded in January of each year for the following academic year, or as soon thereafter as practical.~~

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 143

SENATE BILL NO. 2200

(Senators Holmberg, G. Lee, Trenbeath)
(Representatives R. Kelsch, Monson, Mueller)

STUDENT FINANCIAL ASSISTANCE AND SCHOLARS PROGRAMS

AN ACT to amend and reenact section 15-62.2-03.3 of the North Dakota Century Code, relating to the student financial assistance and scholars programs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷⁵ **SECTION 1. AMENDMENT.** Section 15-62.2-03.3 of the North Dakota Century Code is amended and reenacted as follows:

15-62.2-03.3. Selection of scholars.

1. All eligible candidates must be ranked by their composite scores on the test of academic achievement administered by the American college testing program.
2. If two or more eligible students have the same composite scores, they must be ranked by the numeric sum of the four scale scores on the test of academic achievement administered by the American college testing program.
3. If two or more eligible students have the same numeric sum of the four scale scores, they must be ranked by their high school class rank calculated on a percentile basis.
4. Scholarships must be offered to students in descending order according to this ranking until available funds have been expended, or until the pool of eligible applicants has been exhausted.
5. Scholarships must be awarded in January of each year for the following academic year, or as soon thereafter as practical.

Approved March 26, 2003

Filed March 26, 2003

⁷⁵ Section 15-62.2-03.3 was also amended by section 3 of House Bill No. 1125, chapter 142.

CHAPTER 144

HOUSE BILL NO. 1119

(Education Committee)

(At the request of the Board of University and School Lands)

INDIAN CULTURAL EDUCATION TRUST

AN ACT to create and enact a new chapter to title 15 of the North Dakota Century Code, relating to establishing the Indian cultural education trust; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 15 of the North Dakota Century Code is created and enacted as follows:

Trust establishment. The Indian cultural education trust is established for the purpose of generating income to benefit Indian culture.

Powers and duties of board. The board of university and school lands may accept and administer any gift, grant, bequest, or devise of land or money, on behalf of the state, for the purposes of the Indian cultural education trust. The board may refuse to accept any gift, grant, devise, or bequest that is upon terms or circumstances unacceptable to the board. The board shall manage all land and money in the trust in the same manner that it manages its other trust land and money except as is otherwise provided in this chapter, in the donor agreement, or as may otherwise be required to satisfy the purposes of this chapter.

The board, in its sole discretion, may divest any land or money acquired under this chapter. The donor agreement which placed the land and money into the trust must provide to whom the land is to be conveyed and money disbursed in the event the board decides to divest the land or money.

Donation. A person proposing to donate land or money for the benefit of the trust must present to the board an application and an executed donor agreement between the donor and tribal government of a federally recognized Indian tribe located in North Dakota, South Dakota, Montana, Minnesota, or Wyoming. In accepting the donor agreement, the board is not subject to the provisions of chapter 54-40.2. The board is not responsible for determining which lands have cultural resource significance or for any site preservation or maintenance measures deemed necessary by the donor or the affected tribe. The donor agreement must also make any provision deemed necessary for access to the land by Indians for educational, cultural, or religious purposes.

Trust management. The board must be reimbursed from trust proceeds for all reasonable costs and expenses in managing land and investing trust proceeds. Such reimbursements are to be placed in the state lands maintenance fund. The net income derived from the land and money donated to the trust must be used for trust purposes, except the donor agreement may dedicate a percentage of the net income to trust principal.

The lands placed in the trust may be leased by the board only for grazing or haying purposes.

The board may maintain separate accounts in the trust if a donor agreement requires.

The donor agreement must designate the tribe entitled to receive trust proceeds. The net income from each account must be remitted annually to the designated tribe. The designated tribe is responsible for disbursements of trust proceeds. A dispute over a tribe's use of the disbursements must be resolved by the government of the designated tribe to which the disbursement has been made.

Payments in lieu of taxation. Net income from land and money in the trust must be used in part to pay to the county where the land is located the same amount that would have been assessed against the land for real property taxes if the land was privately owned.

Continuing appropriation. There is appropriated annually the amounts necessary to pay expenses for lands donated under this chapter and managed by the board of university and school lands, including survey costs, surface lease refunds, weed and insect control, cleanup costs, capital improvement rent credits, in lieu of tax payments, or expenses determined by the board as necessary to manage, preserve, and enhance the value of the trust asset. Each payment must be made from the trust fund account for which the land is held.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 145

HOUSE BILL NO. 1295

(Representatives Hawken, Delmore, Haas, N. Johnson)
(Senators J. Lee, Wardner)

SCHOOL DISTRICT EMPLOYEE COMPENSATION REPORTS

AN ACT to amend and reenact section 15.1-02-13 of the North Dakota Century Code, relating to school district employee compensation reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷⁶ **SECTION 1. AMENDMENT.** Section 15.1-02-13 of the North Dakota Century Code is amended and reenacted as follows:

15.1-02-13. School district employee compensation report.

1. Before September eleventh of each year, ~~beginning in 2002,~~ each school district shall ~~provide~~ report the following information to the superintendent of public instruction, with respect to each teacher and class of teachers and with respect to each administrator and class of administrators:
 - a. ~~The total amount of base salary.~~
 - b. ~~The total amount of compensation reportable as gross income under the Internal Revenue Code.~~
 - c. ~~Any other compensation paid or provided to or on behalf of individuals employed as teachers and as administrators.~~
 - d. ~~Health insurance benefits paid to or on behalf of individuals employed as teachers and as administrators.~~
 - e. ~~Retirement contributions and assessments paid on behalf of individuals employed as teachers and as administrators, and including individual shares if paid by the district.~~
 - f. ~~Any other benefits paid or provided to or on behalf of individuals employed as teachers and as administrators.~~
 - a. The number of days each was employed during the preceding school year.
 - b. The base salaries.

⁷⁶ Section 15.1-02-13 was also amended by section 48 of House Bill No. 1183, chapter 138.

- c. The amount of compensation provided for extended contracts.
 - d. The amount of compensation provided for cocurricular activities.
 - e. The amount expended for contract buyouts.
 - f. The amount of compensation provided in lieu of salaries.
 - g. The amount paid for signing bonuses.
 - h. The amount of compensation provided for substitute teaching and workload adjustment.
 - i. The amount of compensation provided for any other purposes.
 - j. The amount expended for health insurance benefits.
 - k. The amount expended for dental, vision, and cancer insurance benefits.
 - l. The amount expended for life and long-term disability insurance benefits.
 - m. The amount of retirement contributions and assessments, including individual shares if paid by the district.
 - n. The district's share of Federal Insurance Contributions Act taxes.
 - o. The amount of dues or membership fees paid by the district.
 - p. Any other benefits provided by the district.
2. In addition to the requirements of subsection 1, each school district shall also indicate:
- a. Whether each teacher and administrator is employed on a full-time or a part-time basis.
 - b. The number of days used to determine the base salary of each teacher and administrator.
3. The superintendent of public instruction shall:
- a. Compile the information required by ~~subsection 4~~ this section in a manner that allows for accurate comparisons ~~based on:~~
 - (1) ~~Full-time versus part-time personnel;~~
 - (2) ~~A normal schoolday versus an extended schoolday; and~~
 - (3) ~~A regular school calendar of approximately one hundred eighty days versus an extended school year.; and~~
 - b. Forward a copy of the compiled information to the governor and the chairman of the legislative council.

3. 4. The superintendent of public instruction may not expand the reporting requirements of this section.
5. If any school district fails without good cause to provide the information required by this section on or before September tenth and in the manner directed by the superintendent of public instruction, the superintendent shall withhold all state aid until the information is received.
4. 6. For purposes of this section:
- a. "Administrator" ~~means~~ includes an individual who is employed by a school district in an administrative position and ~~includes a~~ who is classified by the superintendent of public instruction as:
- (1) A class 67 school district superintendent; ~~an~~;
 - (2) A class 66 assistant or associate superintendent; ~~a~~;
 - (3) A class 53 principal; ~~an~~;
 - (4) A class 05 assistant principal; ~~a~~;
 - (5) A class 29 director, including a special education director, and a vocational education director; ~~and any~~;
 - (6) A class 04 assistant director; and
 - (7) Any other individual whose position requires an administrator's credential.
- b. "Teacher" means an individual, other than an administrator, who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and who is employed by the board of a school district in a position classified by the superintendent of public instruction as ~~of July 1, 2001, as~~:
- (1) A class 22 coordinator;
 - (2) A class 37 guidance counselor or school counselor;
 - (3) A class 38 guidance counselor designate;
 - (4) A class 40 instructional programmer;
 - (5) A class 41 library media specialist;
 - (6) A class 56 pupil personnel service provider;
 - (7) A class 59 school psychologist;
 - (8) A class 62 speech-language pathologist;
 - (9) A class 68 supervisor;
 - (10) A class 70 teacher or special education teacher; or

(11) A class 72 tutor in training.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 146**SENATE BILL NO. 2414**

(Senator Freborg)

(Approved by the Delayed Bills Committee)

NO CHILD LEFT BEHIND INFORMATION

AN ACT to require the superintendent of public instruction to provide information on the No Child Left Behind Act; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**SECTION 1. NO CHILD LEFT BEHIND ACT - INFORMATION REQUIRED.**

Whenever the superintendent of public instruction determines that any bill or amendment under consideration by an interim committee of the legislative council or by a standing committee or a conference committee of the legislative assembly contains a provision required by the No Child Left Behind Act of 2001 [Pub. L. 107-110; 115 Stat. 1425; 20 U.S.C. 6301, et seq.] or by federal regulations promulgated to implement that Act, the superintendent shall provide the members of the appropriate committee with the specific language of the No Child Left Behind Act which sets forth the requirement, together with the statutory citation for that language, or the specific language of the federal regulations which sets forth the requirement, together with the citation for the regulations.

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

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 147

HOUSE BILL NO. 1079

(Education Committee)

(At the request of the Superintendent of Public Instruction)

TEACHER AND ADMINISTRATOR CREDENTIALS

AN ACT to create and enact a new section to chapter 15.1-02 of the North Dakota Century Code, relating to teacher and administrator credentials.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-02 of the North Dakota Century Code is created and enacted as follows:

Superintendent of public instruction - Issuance of credentials to teachers and administrators. The superintendent of public instruction may adopt rules governing the issuance of:

1. Credentials for teachers of driver's education;
2. Credentials for teachers of early childhood special education;
3. Credentials for elementary school principals;
4. Credentials for teachers of students who are emotionally disturbed;
5. Credentials for teachers of students who are gifted and talented;
6. Credentials for secondary school principals;
7. Credentials for library media;
8. Credentials for teachers of title I;
9. Credentials for teachers of students who are mentally retarded;
10. Credentials for teachers of students who are physically disabled;
11. Credentials for coordinators of programs for students with limited English proficiency;
12. Credentials for school counselors;
13. Credentials for special education directors;
14. Credentials for special education strategists;
15. Credentials for teachers of students who have specific learning disabilities;
16. Credentials for superintendents;

17. Credentials for teachers of students who have vision impairments;
18. Credentials for teachers of students who are deaf or hard of hearing;
and
19. Certificate of completion for paraprofessionals.

Approved April 18, 2003
Filed April 18, 2003

CHAPTER 148**SENATE BILL NO. 2066**

(Education Committee)

(At the request of the Superintendent of Public Instruction)

**SCHOOL DISTRICT REVOLVING EQUIPMENT AND
SOFTWARE FUND REPEAL**

AN ACT to repeal section 15.1-03-02 of the North Dakota Century Code, relating to the revolving school district equipment and software fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 15.1-03-02 of the North Dakota Century Code is repealed.

Approved March 14, 2003

Filed March 17, 2003

CHAPTER 149**HOUSE BILL NO. 1325**

(Representatives Devlin, Nelson, Severson)
(Senators Andrist, G. Lee, Mutch)

NATIONAL MOTTO DISPLAY IN SCHOOLS

AN ACT to create and enact a new section to chapter 15.1-06 of the North Dakota Century Code, relating to the display of the national motto in schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-06 of the North Dakota Century Code is created and enacted as follows:

National motto - Display in schools. The motto of the United States of America "IN GOD WE TRUST" may be displayed in each public school.

Approved April 7, 2003

Filed April 7, 2003

CHAPTER 150

HOUSE BILL NO. 1166

(Education Committee)

(At the request of the Superintendent of Public Instruction)

SCHOOL CENSUS AND TRANSPORTATION REPORTS

AN ACT to amend and reenact sections 15.1-07-16, 15.1-09-46, 15.1-27-20, and 15.1-27-29 of the North Dakota Century Code, relating to reports made to the county superintendent of schools and the superintendent of public instruction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-07-16 of the North Dakota Century Code is amended and reenacted as follows:

15.1-07-16. New district - Enumeration. The board of a school district organized after the annual enumeration has been taken shall proceed immediately to take the enumeration, as provided by law, and after receipt of the enumeration by the superintendent of public instruction ~~through the county superintendent of schools,~~ the newly organized district shall receive its share of apportioned funds.

SECTION 2. AMENDMENT. Section 15.1-09-46 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-46. School district census. The board of a school district shall conduct a census during the month of May in each odd-numbered year. The census must enumerate all district residents under age eighteen as of August thirty-first and include their names and the names and addresses of their parents. The board shall approve the census and forward a copy, in the form and manner prescribed by the superintendent of public instruction, of the approved census to the county superintendent of public instruction prior to ~~July fifteenth~~ June thirtieth of the year in which the census is taken. ~~The county superintendent shall submit a summary of the census to the superintendent of public instruction.~~

SECTION 3. AMENDMENT. Section 15.1-27-20 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-20. Per student 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 ~~high school~~ 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 ~~and in no event later than July fifteenth~~, the business manager of each school district that has received payments from state funds under the provisions of this chapter shall file with the ~~county superintendent of schools~~ 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 ~~enrolled during the previous school year~~. The ~~county superintendent~~ shall ~~investigate the validity of the statement and shall determine the residence and other qualifications of each student named in the statement~~. The ~~county superintendent of schools~~ shall attest to the statement. On or before September first of each year, the county superintendent shall certify to the superintendent of public instruction the number of students enrolled in each district in the county for the previous school year upon which any adjustment may be based. If the county superintendent disallows any statement in whole or in part, the county superintendent shall provide notice of the disallowance, together with the names of the affected students, to the superintendent of public instruction and to the school district filing the statement.
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 district may appeal the determination of a ~~county~~ the superintendent by submitting a written appeal to the superintendent of public instruction on or before September fifteenth of the year in which the determination is made. The superintendent of public instruction may modify the determination ~~of the county superintendent~~ if the evidence submitted by the district justifies a modification. The judgment Upon appeal, or in a case when no timely appeal is made, the determination of the superintendent of public instruction is final.

SECTION 4. AMENDMENT. Section 15.1-27-29 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-29. Transportation payments - Certification of information.

1. ~~On or before July fifteenth of each~~ Upon termination of the school year, the business manager of a school district shall certify to the ~~county superintendent of schools~~ school board the following information regarding the buses that transported students residing outside the incorporated limits of the city in which their school was located:
 - a. The number of buses operated on a contract basis or owned and operated by the district;
 - b. The manufacturer's listed passenger capacity of each bus; and
 - c. The daily mileage that each bus traveled in transporting students.
2. ~~On or before July fifteenth of each~~ Upon termination of the school year, the business manager of a school district shall certify to the ~~county superintendent of schools~~ school board the following information regarding the schoolbuses or commercial buses that transported students residing within the incorporated limits of the city in which their school was located:
 - a. A city plat indicating the location of each school building;
 - b. The route traveled by each bus;
 - c. The manufacturer's listed passenger capacity of each bus; and
 - d. The number of one-way bus trips taken during the school year by students residing within the city limits.
3. ~~On or before July fifteenth of each~~ Upon termination of the school year, the business manager of each school district shall certify to the ~~county superintendent of schools~~ school board the amount of transportation payments claimed and any other information required by the superintendent of public instruction.
4. On or before ~~September first~~ June thirtieth of each year, the ~~county superintendent of schools~~ school board shall:
 - a. ~~Certify~~ certify to the superintendent of public instruction in the form and manner prescribed by the superintendent all claims for transportation payments ~~submitted by each school district in the county;~~ and
 - b. ~~Notify a.~~ The superintendent shall notify the school district of any claims for transportation payments that have been disallowed.
5. A district may appeal the decision of a ~~county~~ the superintendent under subsection 4 by submitting a written appeal to the superintendent of public instruction on or before September fifteenth of the year in which the determination is made. The superintendent of public instruction may modify the determination ~~of the county superintendent.~~ The judgment if the facts and law justify the modification. Upon appeal, or in a case

when no timely appeal is made, the determination of the superintendent of public instruction is final.

6. For purposes of this section, daily mileage means twice the distance computed to the nearest tenth of a mile [160.93 meters] traveled in a single trip by each bus over its scheduled route.

Approved April 14, 2003
Filed April 14, 2003

CHAPTER 151**SENATE BILL NO. 2372**

(Senator Freborg)

**SCHOOL BOARD NEPOTISM AND TEACHER
EMPLOYMENT**

AN ACT to amend and reenact subsection 2 of section 15.1-08-06 of the North Dakota Century Code, relating to a cross-reference to a school board nepotism statute; and to repeal section 15.1-09-38 of the North Dakota Century Code, relating to the employment of teachers related to school board members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 15.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

2. The duties set forth in sections 15.1-09-33, and 15.1-09-35, ~~and 15.1-09-38~~ are applicable to a school board governing a military installation school district established under this chapter unless other agreements have been reached.

SECTION 2. REPEAL. Section 15.1-09-38 of the North Dakota Century Code is repealed.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 152**HOUSE BILL NO. 1259**

(Representatives Meier, Delmore, Haas, Hawken)
(Senators Dever, Flakoll)

SCHOOL BOARD MEMBER COMPENSATION

AN ACT to amend and reenact section 15.1-09-06 of the North Dakota Century Code, relating to the salary of school board members.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-09-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-06. School board members - Compensation. Each school board shall set a level of compensation for services payable to its members, ~~provided that no member may receive more than one thousand dollars annually for this purpose.~~ In addition to compensation for services, each member may be reimbursed for all necessary meals and lodging and travel expenses actually incurred while engaged in official business of the board, at the same rate as provided for state officers and employees. Any mileage claimed may not exceed the number of miles [kilometers] between the points traveled as measured by the most usual route.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 153

HOUSE BILL NO. 1273

(Representatives Meier, Haas, Hawken, Nottestad)
(Senators Dever, Wardner)

TEACHER SIGNING BONUSES

AN ACT to create and enact a new section to chapter 15.1-09 of the North Dakota Century Code, relating to the payment of signing bonuses by school boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-09 of the North Dakota Century Code is created and enacted as follows:

School board authority - Payment of signing bonuses.

1. The board of a school district may offer and, upon the signing of the contract by both parties, pay a signing bonus to an individual who:
 - a. Is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board;
 - b. Has signed a contract of employment to serve as a classroom teacher in the district; and
 - c. Was not employed as a classroom teacher by the board of a school district in this state during the previous school year.
2. The board may pay to the individual the signing bonus authorized by subsection 1 in:
 - a. One lump sum upon the individual signing a contract of employment; or
 - b. Installments over a period of time not to exceed three years from the date the individual signed a contract of employment.
3. A signing bonus paid under this section:
 - a. Is in addition to any amount payable under a negotiated teachers' contract;
 - b. May not be included in the district's negotiated salary schedule; and
 - c. May not be included as salary for continuing contract purposes.

CHAPTER 154

SENATE BILL NO. 2169

(Senators Cook, Christenson, Freborg)
(Representatives Delmore, R. Kelsch, Monson)

STUDENT FEES

AN ACT to amend and reenact section 15.1-09-36 of the North Dakota Century Code, relating to prohibiting a school board from charging fees for textbooks and to student fees for the use of musical instruments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷⁷ **SECTION 1. AMENDMENT.** Section 15.1-09-36 of the North Dakota Century Code is amended and reenacted as follows:

15.1-09-36. School board - Authority over student fees.

1. A school board may not charge a fee for textbooks or other items necessary for completion of a specific course required for grade advancement or graduation.
2. A school board may:
 - a. Require that a student pay a security deposit for the return of textbooks, materials, supplies, or equipment.
 - b. Assess a student a use charge if a textbook or other item covered under subsection 1 has received undue wear.
 - c. Require that a student furnish personal or consumable items.
 - d. Require that a student pay an admission fee or other charges for extracurricular or noncurricular activities if the student's attendance is optional.
 - e. Require that a student pay a fee or a premium for any authorized student health and accident benefit plan.
 - f. Require that a student pay a fee for personal athletic equipment and apparel; provided the board shall allow a student to use the student's own equipment and apparel if it meets reasonable health and safety standards established by the board.
 - g. Require that a student pay a fee in any program which generates a product that becomes the personal property of the student.

⁷⁷ Section 15.1-09-36 was also amended by section 50 of House Bill No. 1183, chapter 138.

- h. Require that a student pay a fee for behind-the-wheel driver's education instruction.
 - i. Require that a student pay a fee for goods, including textbooks, and services provided in connection with any postsecondary level program or any program established outside regular elementary, middle school, or secondary school programs, including vocational and technical programs, and adult or continuing education programs.
 - j. Require that a student pay a fee for the use of a musical instrument owned or rented by the school district, provided that the total fee payable by the student for a school year does not exceed the annual rental cost to the district or the annual depreciation plus actual maintenance cost for the instrument.
 - k. Require that a student pay any other fees and charges permitted by statute.
- ~~2.~~ 3. A board may waive any fee if a student or the student's parent or guardian is unable to pay the fee.
- ~~3.~~ 4. A board may not deny or abridge a student's rights or privileges, including the receipt of grades and diplomas, because of the nonpayment of fees. A board, however, may withhold a student's diploma for failure to pay for costs incurred by the student's own negligence or choice, including fines for damaged textbooks and school equipment, library fines, and materials purchased from the school at the option of the student.
4. 5. This section does not preclude the operation of a school store where students may purchase school supplies and materials.
- ~~5.~~ 6. If a board charges fees not authorized by law and refuses to discontinue the charges when directed to do so by the superintendent of public instruction, the superintendent shall withhold the per student and transportation aid payments to which the district is entitled for each student charged an unauthorized fee.

Approved March 21, 2003

Filed March 21, 2003

CHAPTER 155

HOUSE BILL NO. 1258

(Representatives N. Johnson, Froseth, Hawken)

TEACHERS' CONTRACTS IN REORGANIZED DISTRICTS

AN ACT to amend and reenact sections 15.1-12-14 and 15.1-12-15 of the North Dakota Century Code, relating to teachers' contracts in newly reorganized districts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-12-14 of the North Dakota Century Code is amended and reenacted as follows:

15.1-12-14. School district reorganization - School boards - Assumption of duties.

1. Upon approval of a reorganization plan by the electors, in accordance with section 15.1-12-11, a school board for the reorganized district must be elected at the next regular school district election or at a special election called by the county superintendent of schools for that purpose. The first school board election in a newly reorganized district is governed by chapter 15.1-09.
2. Members of newly formed school boards representing reorganized districts may not enter upon the duties of office until the time specified in section 15.1-12-18, except as provided in sections 15.1-12-15 and 15.1-12-16. Before the completion of a reorganization, the board of an existing district may not contract or obligate the district, except with the approval of the county committee or unless authorized by law.

SECTION 2. AMENDMENT. Section 15.1-12-15 of the North Dakota Century Code is amended and reenacted as follows:

15.1-12-15. School district reorganization - School board - Duties.

1. The board of a reorganized school district established under this chapter shall negotiate with the district's teachers and may contract with the teachers' representative organization prior to the effective date of the reorganization.
2. Upon the completion of negotiations and the signing of a negotiated agreement under subsection 1, the board may offer contracts of employment to individual teachers and establish a time certain by which the individual teachers must accept or reject the offers.
3. If by five p.m. on July first of the year the reorganized district begins operations, a negotiated agreement has not been entered between the board and the teachers pursuant to statute, no teacher employed by the board may receive less in salary and benefits than that teacher received

for the preceding school year. For purposes of this section, "salary and benefits" means salary, insurance benefits, teachers' fund for retirement contributions, personal leave, sick leave, accumulated sick leave, extracurricular salary, reduction-in-force policy, grievance procedures, and recall procedures.

- ~~2.~~ 4. On or before February first of the year in which the reorganization becomes effective, the board of the reorganized school district shall hold a public hearing to present the curriculum, course offerings, and staff positions to be available during the coming school year. The board shall publish notice of the hearing in the official newspaper of each county having land in the reorganized district, at least fourteen days before the date of the hearing.
- ~~3.~~ 5. By five p.m. on April fifteenth of the year in which the reorganization becomes effective, the board of the reorganized school district shall notify in writing each teacher employed by the districts being reorganized, whether or not the teacher will be offered a contract of employment with the reorganized district.

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

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 156**SENATE BILL NO. 2136**

(Education Committee)

(At the request of the Education Standards and Practices Board)

**EDUCATION STANDARDS AND PRACTICES BOARD
COMPENSATION**

AN ACT to amend and reenact section 15.1-13-03 of the North Dakota Century Code, relating to compensation of members of the education standards and practices board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-13-03 of the North Dakota Century Code is amended and reenacted as follows:

15.1-13-03. Board compensation. Each member of the board is entitled to receive compensation in the amount of ~~twenty-five~~ sixty-two dollars and fifty cents per day and to reimbursement for expenses as provided by law for other state officers while attending meetings or performing duties directed by the board. A member of the board may not lose the member's regular salary and may not be required to refuse the compensation to which the member is entitled under this section for serving on the board.

Approved March 14, 2003
Filed March 17, 2003

CHAPTER 157

HOUSE BILL NO. 1489

(Representatives R. Kelsch, Hawken, Monson)
(Senators Cook, Freborg, Holmberg)

TEACHER QUALIFICATIONS

AN ACT to create and enact four new sections to chapter 15.1-18 of the North Dakota Century Code, relating to teacher qualifications; to amend and reenact sections 15.1-13-08, 15.1-18-01, and 15.1-18-02 of the North Dakota Century Code, relating to teacher qualifications; to provide for a report; to repeal section 15.1-18-03 of the North Dakota Century Code, relating to high school teacher qualifications; to provide directives; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-13-08 of the North Dakota Century Code is amended and reenacted as follows:

15.1-13-08. Board duties. The board shall:

1. Supervise the licensure of teachers.
2. Set standards for and approve teacher preparation programs.
3. Seek the advice of teachers, administrators, school board members, teacher education professors, and other interested citizens in developing and updating codes or standards of ethics, conduct, professional performance, and professional practices.
4. Adopt, in accordance with chapter 28-32, codes or standards of ethics, conduct, professional performance, and professional practices.
5. Make recommendations for the inservice education of individuals engaged in the profession of teaching.
6. Issue major equivalency endorsements and minor equivalency endorsements.
7. Appoint an executive director to serve at its discretion.
8. Authorize the executive director to employ personnel, subject to approval by the board.

SECTION 2. AMENDMENT. Section 15.1-18-01 of the North Dakota Century Code is amended and reenacted as follows:

15.1-18-01. Early childhood education teaching license. The education standards and practices board shall ~~develop and implement~~ issue an optional early childhood education teaching license or endorsement to an applicant who meets the requirements set by the board. The optional early childhood education teaching

license may be used in nonparental settings such as early childhood programs, preschool programs, and head start programs.

SECTION 3. AMENDMENT. Section 15.1-18-02 of the North Dakota Century Code is amended and reenacted as follows:

15.1-18-02. Kindergarten through grade eight - Teacher Prekindergarten and kindergarten teacher qualifications - Exceptions.

4. In order to teach prekindergarten and kindergarten, an individual must:
 - a. ~~Be be~~ licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and have a kindergarten endorsement; or
 - b. Be licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and demonstrate to the satisfaction of the education standards and practices board that the individual will obtain a kindergarten endorsement within two years from the date of the assignment to teach kindergarten.
2. In order to teach any grade from one through eight, an individual must:
 - a. Be licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and have a major, a minor, or an endorsement in elementary education; or
 - b. Be licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and demonstrate to the satisfaction of the education standards and practices board that the individual will obtain an endorsement in elementary education within two years from the date of the assignment to teach any grade from one through eight.
3. Notwithstanding subsection 2, an individual may teach any grade from five through eight if the individual:
 - a. Is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and has a major or an endorsement in middle school education; or
 - b. Is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and demonstrates to the satisfaction of the education standards and practices board that the individual will obtain an endorsement in middle school education within two years from the date of assignment to teach any grade from five through eight.
4. Notwithstanding subsection 2, an individual may teach grade seven or eight if the individual is licensed to teach by the education standards and practices board or approved to teach by the education standards

and practices board and has a major or a minor in the assigned course area or field.

5. Notwithstanding subsection 2, an individual may teach special education, foreign language, art, music, physical education, business education, and computer education at any grade level from kindergarten through eight, provided the individual is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and meets the requirements imposed by the superintendent of public instruction.
6. An individual may obtain an endorsement by completing teaching requirements and the minimum number of credit hours in courses prescribed by the education standards and practices board.
7. This section does not apply to an eminence-credentialed teacher and:
 1. Have a major in elementary education and a kindergarten endorsement;
 2. Have a major equivalency in elementary education and a kindergarten endorsement;
 3. Have a major in elementary education and an early childhood education endorsement;
 4. Have a major equivalency in elementary education and an early childhood education endorsement;
 5. Have a major in early childhood education; or
 6. Have a major equivalency in early childhood education.

SECTION 4. A new section to chapter 15.1-18 of the North Dakota Century Code is created and enacted as follows:

Elementary school teacher qualifications.

1. In order to teach any grade from one through six in an elementary school, an individual must be licensed to teach by the education standards and practices board and:
 - a. Have a major in elementary education; or
 - b. Have a major equivalency in elementary education.
2. Notwithstanding the provisions of subsection 1, an individual may teach any grade from one through three in an elementary school provided the individual is licensed to teach by the education standards and practices board and:
 - a. Has a major in early childhood education; or
 - b. Has a major equivalency in early childhood education.

3. In order to teach any grade from one through eight in a self-contained classroom, an individual must be licensed to teach by the education standards and practices board and:
 - a. Have a major in elementary education; or
 - b. Have a major equivalency in elementary education.

SECTION 5. A new section to chapter 15.1-18 of the North Dakota Century Code is created and enacted as follows:

Middle school teacher qualifications. In order to teach any grade from five through eight in a middle school, an individual must be licensed to teach by the education standards and practices board and:

1. Have a major in middle level education, with content in the areas taught by the individual and defined by the education standards and practices board as core academic areas;
2. Have a major equivalency in middle level education, with content in the areas taught by the individual and defined by the education standards and practices board as core academic areas; or
3. Have a major, a major equivalency, a minor, or a minor equivalency in each area taught by the individual and not defined by the education standards and practices board as a core academic area.

SECTION 6. A new section to chapter 15.1-18 of the North Dakota Century Code is created and enacted as follows:

High school qualifications. In order to teach grades seven through twelve, an individual must be licensed to teach by the education standards and practices board and:

1. Have a major in the areas taught by the individual and defined by the education standards and practices board as core academic areas;
2. Have a major equivalency in the areas taught by the individual and defined by the educational standards and practices board as core academic areas; or
3. Have a major, a major equivalency, a minor, or a minor equivalency in each area taught by the individual and not defined by the education standards and practices board as a core academic area.

SECTION 7. A new section to chapter 15.1-18 of the North Dakota Century Code is created and enacted as follows:

Specialty areas - Teacher qualification. Notwithstanding the requirements of this chapter:

1. An individual may teach art, business education, computer education, a foreign language, music, physical education, and special education at any grade level from one through eight, provided the individual:

- a. Is licensed to teach by the education standards and practices board;
 - b. Is approved to teach in that area by the education standards and practices board; and
 - c. Meets all requirements set forth in rule by the superintendent of public instruction.
2. An individual may teach Native American languages provided the individual is an eminence credentialed teacher.
 3. An individual may teach in the areas of trade, industry, technical occupations, or health occupations, provided the individual has been issued a license to teach in such areas by the education standards and practices board.

SECTION 8. TEACHER QUALIFICATIONS - ACCREDITATION RULES - DIRECTIVES. For purposes of accreditation, the superintendent of public instruction may not establish teacher qualification requirements that exceed those established by the education standards and practices board.

SECTION 9. CONTINUING EDUCATION - PAYMENT - DIRECTIVES. A school board's right to reimburse teachers for the cost of continuing education activities undertaken in connection with the No Child Left Behind Act of 2001 may not be contractually curtailed.

SECTION 10. REPORT - TEACHER LICENSURE PROCESS. On or before July 1, 2004, the education standards and practices board shall report to a committee designated by the legislative council regarding potential changes to the licensure process and the impact of those changes.

SECTION 11. REPEAL. Section 15.1-18-03 of the North Dakota Century Code is repealed.

SECTION 12. EFFECTIVE DATE. Sections 2 through 7 and section 11 of this Act become effective on July 1, 2006.

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 158

SENATE BILL NO. 2135

(Education Committee)

(At the request of the Education Standards and Practices Board)

NATIONAL TEACHER CERTIFICATION

AN ACT to provide for national certification of teachers; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Board" means the education standards and practices board.
2. "Certification" means national board certification as provided by the national board.
3. "National board" means the national board for professional teaching standards.

SECTION 2. Board duties. The board shall:

1. Inform teachers of the national board certification program and the scholarships and services the national board provides to teachers seeking certification.
2. 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.
3.
 - a. Approve no more than seventeen applications per year;
 - b. During each year of the biennium, reserve three of the available scholarships for individuals teaching at low-performing schools;
 - c. During each year of the biennium, award no more than two of the remaining fourteen available scholarships to applicants employed by the same school district;
 - d. Require the recipient to serve during the school year as a full-time classroom teacher in a public or nonpublic school in this state; and
 - e. Require the recipient to participate in mentoring programs and teacher evaluation programs developed and implemented in the employing school or school district.
4. Ensure that all scholarship recipients receive adequate information regarding the level of commitment required to acquire certification.

5. 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.

SECTION 3. 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, to the education standards and practices board for the purpose of procuring federal matching grants to provide for the national board certification of teachers, for the biennium beginning July 1, 2003 and ending June 30, 2005.

Approved April 24, 2003

Filed April 24, 2003

CHAPTER 159

HOUSE BILL NO. 1237

(Representatives Nottestad, Aarsvold, Haas)
(Senator Espegard)

SCHOOL DISTRICT WEAPONS POLICIES

AN ACT to amend and reenact sections 15.1-19-09 and 15.1-19-10 of the North Dakota Century Code, relating to the suspension and expulsion of students and school district weapons policies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-19-09 of the North Dakota Century Code is amended and reenacted as follows:

15.1-19-09. Students - Suspension and expulsion - Rules.

1. The board of a school district shall adopt rules regarding the suspension and expulsion of a student. The rules for expulsion must provide for a procedural due process hearing in the manner provided for in subsection 2 of section 15.1-19-10, before the determination to expel a student is made. A student's parent or representative must be allowed to participate in the expulsion hearing.
2. A student may be suspended for up to ten days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
3. A student enrolled in an alternative education program for which state per student payments are available may be suspended for up to twenty days for insubordination, habitual indolence, disorderly conduct, or for violating a school district weapons policy.
4. A student, including one enrolled in an alternative education program, may be expelled from school for insubordination, habitual indolence, or disorderly conduct; provided the expulsion does not last beyond the termination of the current school year. A student who violates the school district's weapons policy may be expelled for up to twelve months.

SECTION 2. AMENDMENT. Section 15.1-19-10 of the North Dakota Century Code is amended and reenacted as follows:

15.1-19-10. Possession of a weapon - Policy - Expulsion from school.

1. The board of each school district shall adopt a policy governing the possession of weapons and firearms on school property or at a school function and provide for the punishment of any student found to be in violation of the policy.
2. The ~~weapons~~ policy must prohibit the possession of a weapon or a firearm by a student on school property and at school functions and

provide for the punishment of any student found to be in violation. Punishment must include immediate suspension from school and expulsion. A student who possesses a firearm in violation of this section must be expelled for at least one year. The school district firearms policy must authorize the school district superintendent or the school principal, if the school district does not have a superintendent, to modify an expulsion for firearms possession under this section on a case-by-case basis in accordance with criteria established by the board. Before expelling a student, a school board or its designated hearing officer, within ten days of the student's suspension, shall provide the student with a hearing before the school board at which time the school board or its designated hearing officer shall take testimony and consider evidence, including the existence of mitigating circumstances. If a designated hearing officer orders that a student be expelled, the student may seek a review of the decision by the school board, based on the record of the expulsion hearing.

3. If a ~~board~~ school district expels a student under this section, the ~~board~~ district may authorize the provision of educational services to the student in an alternative setting.
4. Actions under this section may not conflict with state special education laws or with the Individuals With Disabilities Education Act [Pub. L. 91-230; 84 Stat. 121; 20 U.S.C. 1400 et seq.].
5. This section does not apply to any student participating in a school-sponsored shooting sport, provided the student informs the school principal of the student's participation and the student complies with all requirements set by the principal regarding the safe handling and storage of the firearm.
6. For purposes of this section:
 - a. "Firearm" has the meaning provided in Public Law No. 90-351 [82 Stat. 197; 18 U.S.C. 921].
 - b. "School property" includes all land within the perimeter of the school site and all school buildings, structures, facilities, and school vehicles, whether owned or leased by a school district, and the site of any school-sponsored event or activity.

Approved March 31, 2003
Filed March 31, 2003

CHAPTER 160

HOUSE BILL NO. 1033

(Legislative Council)
(Education Committee)

HIGH SCHOOL GRADUATION 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 graduation requirements; to amend and reenact section 15.1-23-17 of the North Dakota Century Code, relating to high school graduation requirements for students receiving home education; 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:

High school coursework 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.

SECTION 2. AMENDMENT. Section 15.1-23-17 of the North Dakota Century Code is amended and reenacted as follows:

15.1-23-17. Home education - High school diplomas.

1. A child's school district of residence, an approved nonpublic high school, or the North Dakota division of independent study 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 provided the child, through home education, has completed at least ~~seventeen~~ 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.
3. If for any reason the documentation required in subsection 1 or 2 is unavailable, the entity issuing the diploma may accept any other

reasonable proof that the child has met the applicable requirements for high school graduation.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 2005.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 161**SENATE BILL NO. 2177**

(Senators Wardner, Urlacher)
(Representatives Haas, N. Johnson, Wald)

HIGH SCHOOL UNIT INSTRUCTIONAL TIME

AN ACT to amend and reenact section 15.1-21-03 of the North Dakota Century Code, relating to instructional time for high school units.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-21-03 of the North Dakota Century Code is amended and reenacted as follows:

15.1-21-03. High school unit - Instructional time.

1. Except as provided in subsection 2, each unit must consist of at least one hundred twenty hours of instruction per school calendar.
2. The following units must consist of at least one hundred fifty hours of instruction per school calendar: natural sciences, agriculture, business and office technology, marketing, diversified occupations, trade and industrial education, technology education, and health careers.
3. The hour requirements of this section are subject to reductions resulting from the holidays and nonstudent contact days provided for in section 15.1-06-04.
4. This section does not apply to schools or school districts having block schedules approved by the superintendent of public instruction.

Approved March 21, 2003
Filed March 21, 2003

CHAPTER 162

SENATE BILL NO. 2065

(Education Committee)

(At the request of the Superintendent of Public Instruction)

TESTING PUBLIC SCHOOL STUDENT ACHIEVEMENT

AN ACT to amend and reenact sections 15.1-21-08 and 15.1-21-10 of the North Dakota Century Code, relating to the state assessment of public school students in reading, mathematics, and science.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-21-08 of the North Dakota Century Code is amended and reenacted as follows:

15.1-21-08. Reading and, mathematics, and science - Administration of test. ~~Beginning during the second half of the 2001-02 school year and annually thereafter, the~~

1. The superintendent of public instruction shall administer to public school students a test that is aligned to the state content and achievement standards in reading and mathematics. This test must be administered to all public school students in at least one grade level selected within each of the following grade spans: grades three through five; grades six through nine; and grades ten through twelve. Beginning no later than the 2005-06 school year and annually thereafter, the superintendent of public instruction shall administer the reading and mathematics test to all public school students in grades three, four, five, six, seven, eight, and eleven.
2. Beginning no later than the 2007-08 school year and annually thereafter, the superintendent of public instruction shall administer a test that is aligned to the state content and achievement standards in science. This test must be administered to all public school students in at least one grade level selected from three through five; in at least one grade level selected from six through nine; and in grade eleven. The superintendent of public instruction may not administer the grade eleven test after December first of each school year.

SECTION 2. AMENDMENT. Section 15.1-21-10 of the North Dakota Century Code is amended and reenacted as follows:

15.1-21-10. Test scores - Publication. Upon receiving notice that the compilation of test scores has been completed, the superintendent of public instruction shall inform the legislative council. The superintendent shall present the test scores publicly for the first time at a meeting of a legislative committee designated by the legislative council. At the meeting, the superintendent and representatives of the testing service that created the tests shall provide detailed testimony regarding the testing instrument, the methodology used to test and assess the students, the established cut scores, the methodology used to determine the cut scores, the validation of all test products, and the significance of the test scores.

Approved April 24, 2003

Filed April 24, 2003

CHAPTER 163

HOUSE BILL NO. 1296

(Representatives Hawken, Delmore, Haas)
(Senators J. Lee, Wardner)

SCHOOL DISTRICT PROFESSIONAL DEVELOPMENT EXPENDITURE REPORTS

AN ACT to amend and reenact subsection 1 of section 15.1-21-12 of the North Dakota Century Code, relating to the reporting of professional development funds and expenditures by school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 15.1-21-12 of the North Dakota Century Code is amended and reenacted as follows:

1. On or before October first of each year, each school district shall file a report with the superintendent of public instruction indicating:
 - a. The amount and source of funds that were made available to the district for professional development during the preceding school year;
 - b. The amount and source of funds that were expended by the district for professional development during the preceding school year; and
 - c. ~~The number of district teachers who participated in professional development activities during the preceding school year;~~
 - d. ~~The source of funding for~~ A separate list of the professional development activities in which the ~~teachers~~ district participated during the preceding school year; and the amount of time committed to the activities.
 - e. ~~The nature and scope of the professional development activities in which the teachers participated.~~

Approved April 4, 2003
Filed April 7, 2003

CHAPTER 164**SENATE BILL NO. 2332**

(Senators Christenson, Cook)
(Representatives Grande, S. Kelsh)

MINORS' TOBACCO CITATION REPORTS

AN ACT to amend and reenact section 15.1-24-05 of the North Dakota Century Code, relating to law enforcement reports to schools of minors' tobacco citations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-24-05 of the North Dakota Century Code is amended and reenacted as follows:

15.1-24-05. Law enforcement agencies - Duty to inform team.

1. A law enforcement agency shall notify a school principal in writing if the agency has probable cause to believe that a student enrolled in the school has violated section 5-01-08, section 12.1-31-03, chapter 19-03.1, chapter 19-03.2, chapter 19-03.4, section 39-08-01, or section 39-08-18. The law enforcement agency shall provide the notice within two weeks of an incident.
2. The principal shall forward the notice to the school's chemical abuse preassessment team or support team referenced in section ~~15.1-25-03~~ 15.1-24-03.
3. Subsection 1 does not apply if, in the opinion of the law enforcement agency, providing the notice would jeopardize the conclusion of a criminal investigation.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 165

HOUSE BILL NO. 1383

(Representatives Hawken, Delmore, Herbel, Meier)
(Senators Flakoll, Holmberg)

ENGLISH LANGUAGE LEARNER STUDENT PAYMENTS

AN ACT to amend and reenact section 15.1-27-12 of the North Dakota Century Code, relating to per student payments for English language learners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-27-12 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-12. Per student payments - Limited English proficient students language learners.

1. In addition to any other payments provided for by this chapter, each school district is entitled to receive:
 - a. ~~Four hundred twenty-five dollars for each student who has been assessed by the student's school district and found to have negligible limited English language skills, as evidenced by a classification of level I using the Woodcock-Munoz language survey;~~
 - b. ~~Three hundred twenty-five dollars for each student who has been assessed by the student's school district and determined to have very limited English language skills, as evidenced by a classification of level II using the Woodcock-Munoz language survey; and~~
 - e. ~~Two hundred twenty-five dollars for each student who has been assessed by the student's school district and determined to have limited English language skills, as evidenced by a classification of level III using the Woodcock-Munoz language survey~~ The amount of money that results from multiplying the per student amount calculated under subsection 5 by 10.0 for each English language learner determined to have preliteracy English language skills and a proficiency level of I;
 - b. The amount of money that results from multiplying the per student amount calculated under subsection 5 by 8.0 for each English language learner determined to have beginning English language skills and a proficiency level of II;
 - c. The amount of money that results from multiplying the per student amount calculated under subsection 5 by 4.0 for each English language learner determined to have intermediate English language skills and a proficiency level of III; and

- d. The per student amount calculated under subsection 5 for each English language learner determined to have basic English language skills and a proficiency level of IV.
2. In order to be eligible for assessment under this section, a student:
- a. Must be at least five years of age but must not have reached the age of twenty-two;
 - b. Must be enrolled in a school district in this state;
 - c. Must have a primary language other than English or come from an environment in which a language other than English significantly impacts the individual's level of English language proficiency; and
 - d. Must have 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.
3. In order to be eligible for the payment provided for in this section, a school district must provide an approved program of instruction for students who have ~~negligible limited~~ preliterate English language skills, very limited beginning English language skills, or limited intermediate English language skills, or basic English language skills.
4. a. In order to receive the full payment provided for in this section, a school district must ~~complete the student assessment required by subsection 4 and forward the results to the superintendent of public instruction on or before December first of each school year~~ assess each eligible student using a proficiency test that is aligned to the state English language proficiency standards and the state language proficiency test.
- b. On or before December first of each year, a school district shall submit to the superintendent of public instruction an application for payment. The application must include:
- (1) A description of the district's English language learner program;
 - (2) The result of the district's annual student assessment required under subdivision a; and
 - (3) Any other information requested by the superintendent of public instruction.
5. a. Each year of the biennium the superintendent of public instruction shall calculate the total weighted number of students eligible for payment during that year by determining the sum of all English language learner students weighted as follows:
- (1) Ten times the number of level I students;
 - (2) Eight times the number of level II students;

- (3) Four times the number of level III students; and
 - (4) The number of level IV students.
 - b. The superintendent of public instruction shall determine the per student amount used to calculate payments under this section during the first year of the biennium by dividing the total weighted number of students eligible for payment under this section into forty-nine percent of the total amount appropriated for this section.
 - c. The superintendent of public instruction shall determine the per student dollar amount used to calculate payments under this section during the second year of the biennium by dividing the total weighted number of students eligible for payment under this section into fifty-one percent of the total amount appropriated for this section.
6. The superintendent shall distribute the payments no later than May thirtieth of each school year. ~~The superintendent shall prorate payments under this section for any students registering in the school district after the start of the school year or departing from the school district prior to the completion of the school year.~~

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 166

HOUSE BILL NO. 1331

(Representatives Timm, Haas, R. Kelsch)

STUDENT TRANSPORTATION AFTER SCHOOL CLOSURE

AN ACT to amend and reenact section 15.1-30-01 of the North Dakota Century Code, relating to the transportation of students.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-30-01 of the North Dakota Century Code is amended and reenacted as follows:

15.1-30-01. Transportation or meals and lodging - Options of school board.

1. The board of a school district may:
 - a. Provide for the transportation of a student to and from school; or
 - b. If acceptable to the student's parent, reimburse the parent for expenses incurred in providing meals and lodging to the student outside the student's home, provided that the reimbursement may not exceed the amount permitted under subsection 4 of section 15.1-27-27.
2. A parent receiving payments under section 15.1-30-02 is not eligible to receive payments under this section.
3. If the board elects to provide for the transportation of students by public transit, the board shall establish eligibility criteria based on a minimum distance between a student's residence and the school. Except as otherwise provided by law, the board shall apply the criteria equally to all students in the district.
4. If the board closes one of several schools in the district, nothing in this section precludes the board from agreeing to provide transportation to those students who were placed in another school in the district because of the closure.
5. Benefits under this section are available even if a student is transported to another school district in or outside this state, provided the student's attendance meets all other conditions established by law.

Approved March 31, 2003
Filed March 31, 2003

CHAPTER 167

HOUSE BILL NO. 1086

(Education Committee)

(At the request of the Superintendent of Public Instruction)

OPEN ENROLLMENT AND STUDENT TRANSFERS

AN ACT to create and enact a new section to chapter 15.1-31 of the North Dakota Century Code, relating to open enrollment and the transfer of students from certain schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-31 of the North Dakota Century Code is created and enacted as follows:

Open enrollment - Transfer of students - Responsibility of district of residence.

1. Notwithstanding the provisions of chapter 15.1-31, a student's parent may apply to a contiguous school district for admission of the student at any time during the school year if:
 - a. The student was a victim of violence occurring within the school in which the student was enrolled and the violence was documented;
 - b. The superintendent of public instruction has declared the school in which the student was enrolled to be an unsafe school; or
 - c. The superintendent of public instruction has identified the school in which the student was enrolled as one that requires program improvement for six consecutive years.
2. The school district receiving an application under subsection 1 shall review the application to ensure compliance with the provisions of subsection 1 and shall notify the student's parent and the student's school district of residence of the arrangements for the student's transfer within five days from the date the application was received.
3. The student's school district of residence shall consider the student transferred as of the date of enrollment by the admitting district.
4. Upon transfer of a student under this section, the board of the admitting district and the board of the student's school district of residence shall enter into a tuition agreement. The student's school district of residence shall reimburse the admitting district for all costs incurred by the admitting district in providing education for the student.
5. The student's school district of residence shall transport the student to school in the admitting district or shall reimburse the admitting district for all costs incurred in transporting the student or providing for the transportation of the student to school in the admitting district. These

transportation costs are not reimbursable through state transportation funds.

6. The provisions of this section are applicable to a student until the conclusion of the school year in which the superintendent of public instruction declares that the school in the student's district of residence is no longer an unsafe school or that the school no longer requires program improvement.

Approved April 18, 2003
Filed April 18, 2003

CHAPTER 168

HOUSE BILL NO. 1080

(Education Committee)

(At the request of the Superintendent of Public Instruction)

INCARCERATED DISABLED STUDENT DEFINITION

AN ACT to amend and reenact subsection 4 of section 15.1-32-01 of the North Dakota Century Code, relating to the definition of students with disabilities who are incarcerated.

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. "Student with disabilities" 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 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 retardation, hearing impairment, deafness, deafness-blindness, a speech or language impairment, a visual impairment, emotional disturbance, an orthopedic impairment, or autism, and an individual who has a specific learning disability, a traumatic brain injury, or other health impairment. ~~The term does not include an individual who is at least eighteen but not yet twenty-one years of age and incarcerated in an adult correctional facility unless, in the individual's last educational placement prior to incarceration, the individual was identified as being a student with a disability and had an individualized education program or services plan.~~ The term includes a student aged 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.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 169**HOUSE BILL NO. 1397**

(Representative R. Kelsch)

SCHOOL DISTRICT FOOD SERVICE

AN ACT to create and enact a new section to chapter 15.1-35 of the North Dakota Century Code, relating to contracts for the preparation and provision of meals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-35 of the North Dakota Century Code is created and enacted as follows:

Contract - Preparation and provision of meals.

1. 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, provided any person that wishes to enter a contract with the board under this section first demonstrates to the satisfaction of the board that there are no private entities able and willing to enter into such a contract.
2. 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.
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 April 21, 2003

Filed April 22, 2003

CHAPTER 170

SENATE BILL NO. 2404

(Senators Cook, Kringstad)
(Representatives R. Kelsch, Porter)

YOUTH CORRECTIONAL CENTER TEACHER APPROPRIATION

AN ACT to amend and reenact subsection 2 of section 15 of chapter 173 of the 2001 Session Laws, relating to the use of contingent payments for the compensation of teachers employed at the youth correctional center; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION.

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$66,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation for the purpose of providing \$3,000 in additional compensation to twenty-two eligible individuals who are employed as teachers at the youth correctional center, for the period beginning January 1, 2001, and ending June 30, 2003.
2. For purposes of this section, "teacher" means an individual, other than an administrator, who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and who has been employed full-time at the youth correctional center for at least the period from July 1, 2001, through the effective date of this Act, in a position classified by the superintendent of public instruction as:
 - a. A class 22 coordinator;
 - b. A class 37 guidance counselor or school counselor;
 - c. A class 38 guidance counselor or designate;
 - d. A class 40 instructional programmer;
 - e. A class 41 library media specialist;
 - f. A class 56 pupil personnel service provider;
 - g. A class 59 school psychologist;
 - h. A class 62 speech-language pathologist;
 - i. A class 68 supervisor;
 - j. A class 70 teacher or special education teacher; or

- k. A class 72 tutor in training.

SECTION 2. AMENDMENT. Subsection 2 of section 15 of chapter 173 of the 2001 Session Laws is amended and reenacted as follows:

2. If funds appropriated by the legislative assembly to the grants-teacher compensation payments line item in House Bill No. 1013, as approved by the fifty-seventh legislative assembly, remain after completion of all statutory obligations, to the extent of legislative appropriations, the superintendent of public instruction shall distribute all of the remaining funds, except sixty-six thousand dollars, as additional per student payments under chapter ~~15-40.4~~ or 15.1-27. The state treasurer shall transfer the sixty-six thousand dollars to the state general fund for the purposes as provided in section 1.

SECTION 3. DEPARTMENT OF CORRECTIONS - 2005-07 BUDGET PREPARATION. In compiling the departmental budget for the 2005-07 biennium, the department of corrections and rehabilitation shall consider the increase in teacher compensation provided for by this Act as a portion of the base salary payable to the teachers employed at the youth correctional center.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 8, 2003
Filed April 9, 2003

ELECTIONS

CHAPTER 171

SENATE BILL NO. 2409

(Senators Stenehjem, O'Connell)
(Representative Berg)

VOTING SYSTEM CERTIFICATION AND GRIEVANCES

AN ACT to create and enact two new sections to chapter 16.1-01, a new section to chapter 16.1-06, and a new section to chapter 16.1-13 of the North Dakota Century Code, relating to the secretary of state establishing an election fund, the establishment of a state-based voting grievance procedure and to certify and decertify electronic voting systems, and the casting of ballots after poll closings; to amend and reenact sections 16.1-01-01, 16.1-01-07, 16.1-05-04, 16.1-06-03, 16.1-06-04, 16.1-06-05, 16.1-06-08, 16.1-06-10.1, 16.1-06-11, 16.1-06-12, 16.1-06-14, 16.1-06-15, 16.1-06-17, 16.1-06-19, 16.1-07-13, 16.1-13-22, 16.1-13-24, 16.1-13-25, 16.1-13-26, 16.1-13-29, 16.1-13-32, 16.1-13-33, 16.1-15-01, 16.1-15-09, and 16.1-15-10, subsection 5 of section 16.1-16-01, and sections 16.1-16-07 and 40-21-09 of the North Dakota Century Code, relating to the duties of the secretary of state concerning administration of elections authorizing direct-recording electronic voting systems and prohibiting voting machines, electronic voting systems, and counting machines employing punch cards; to repeal sections 16.1-06-10, 16.1-06-13, 16.1-06-24, and 16.1-15-11 of the North Dakota Century Code, relating to voting machines, requirements for voting machines, violations for tampering with voting machines, preparation of punch card ballots, and locking and securing voting machines; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-01. Secretary of state to supervise election procedures - County administrator of elections.

1. The secretary of state must be, ex officio, supervisor of elections and may employ additional personnel to administer this title. The secretary of state shall supervise the conduct of elections and in that supervisory capacity has, in addition to other powers conferred by law, the power to examine upon the secretary of state's request or the request of any election official, any election ballot or other material, electronic voting system or counting machine authorized by chapter 16.1-06, or device used in connection with any election, for the purpose of determining sufficient compliance with the law and established criteria and standards adopted by the secretary of state according to section 16 of this Act. The secretary of state, upon determining that any ballot or other material, electronic voting system or counting machine, or device is not in sufficient compliance with the law or established criteria and

standards, shall direct the proper changes to be made, and in the case of electronic voting systems and counting machines, may decertify the electronic voting systems and counting machines according to the rules adopted under section 16 of this Act.

2. In addition to other duties provided elsewhere by law, the secretary of state shall:
 - a. Develop and implement uniform training programs for all election officials in the state.
 - b. Prepare information for voters on voting procedures.
 - c. Publish and distribute ~~to each county a political~~ an election calendar, a manual on election procedures, and a map of all election legislative districts for state and national office in that county.
 - d. Convene ~~an annual~~ a state election conference of county auditors at the beginning of each election year and whenever deemed necessary by the secretary of state to discuss uniform implementation of state election policies.
 - e. Prescribe the form of all ballots and the form and wording of ballots on state referendum questions, issues, and constitutional amendments.
 - f. Investigate or cause to be investigated the nonperformance of duties or violations of election laws by election officers.
 - g. Require such reports from county auditors on election matters as deemed necessary.
 - h. Certify results of statewide elections.
 - i. ~~Establish and carry out accounting procedures designed to reflect all election expenditures incurred by the state.~~
 - j. Prepare and publish ~~biennial~~ reports whenever deemed necessary on the conduct and costs of voting in the state, including a tabulation of election returns and such other information and statistics as deemed appropriate.
 - ~~k.~~ j. Establish standards for ~~all election machinery, locations,~~ precincts and polling locations, numbering precincts, precinct maps, maintaining and updating pollbooks, and forms and supplies, including but not limited to, ballots, wrappers, seals, stamps, ballot boxes, pollbooks, tally sheets, and reports; voting machines, electronic voting systems, and voting places.
 - ~~l.~~ k. Prescribe the order in which each political subdivision will appear on a ~~primary~~ an election ballot.
3. In carrying out the secretary of state's duties and to assure uniform voting opportunities throughout the state, and for the purpose of implementing the provisions of this title and any other requirement

imposed upon the state by the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15301 et seq.] not otherwise addressed in this Act, the secretary of state shall may from time to time issue rules and regulations the secretary of state deems necessary, which must be consistent with the provisions of this title or the Help America Vote Act of 2002 and be adopted and published in accordance with chapter 28-32, but which need not comply with section 28-32-07.

4. In each county there must be a county administrator of elections who must be the county auditor. The county auditor is responsible to the secretary of state for the proper administration within the auditor's county of state laws, rules, and regulations concerning election procedures.
5. In addition to other statutory duties, the county auditor shall:
 - a. Procure and distribute supplies required for voting in the county.
 - b. Prepare and disseminate voter information as prescribed by the secretary of state.
 - c. Carry out uniform training programs for all county and precinct election officials as prescribed by the secretary of state.
 - d. Receive and handle complaints referred to the county auditor by any voter or precinct official involving circulation of petitions, challenges to voters, actions of election officials, or irregularities of any kind in voting. The county auditor shall refer complaints to the secretary of state or the proper prosecuting authority, as the county auditor deems appropriate.

Upon completion of the duties required by this subsection, the county auditor shall certify to the secretary of state, in the manner prescribed by the secretary of state, that the duties have been completed.

SECTION 2. AMENDMENT. Section 16.1-01-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-07. Constitutional amendments and other questions to be advertised - Notification by secretary of state - Manner of publishing. Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote, the secretary of state shall, not less than fifty-five days before the election, certify the amendment or other question to each county auditor and each auditor shall cause notice thereof to be included in the notice required by section 16.1-13-05. Questions to be submitted to the people of a particular county must be advertised in the same manner.

The secretary of state shall, at the same time the secretary of state certifies notice to the county auditors of the submission of a constitutional amendment or other question, certify the ballot form for such questions. The ballot form must conform to the provisions of section 16.1-06-09 and must be used by all county auditors in preparing ballots for submission to the electorate of each county and in the preparation of sample ballots. Any requirements in this title that a sample ballot be published will be met by the publication of either the paper ballot or the ballot as it will appear to persons using a an electronic voting machine system device, depending upon the method of voting used in the area involved. Absentee voter

ballots may not be considered in determining which method of voting is used in an area. If both paper ballots and electronic voting machines system ballots are used in an area, both forms must be published as sample ballots to meet publication and notice requirements. For two consecutive weeks before the sample ballot is published, an analysis of any constitutional amendment, initiated measure, or referred measure, written by the secretary of state after consultation with the attorney general, must be published in columns to enable the electors to become familiar with the effect of the proposed constitutional amendment or initiated or referred measure.

SECTION 3. A new section to chapter 16.1-01 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to establish and maintain an election fund. The secretary of state shall establish and maintain a fund, known as the election fund, in the state treasury for the purpose of depositing payments and grants made to the state under the provisions of sections 101, 101(c), and 906, and title III of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15301, 42 U.S.C. 15545, 42 U.S.C. 15481-15502], and funds appropriated by the state. The moneys in the election fund must be used for the exclusive purpose of carrying out activities of the Help America Vote Act of 2002 and are subject to chapter 54-16.

SECTION 4. A new section to chapter 16.1-01 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to establish a uniform state-based administrative complaint procedure. The secretary of state shall establish a uniform state-based administrative complaint procedure to remedy grievances according to section 402 of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15512]. The complaint procedure must be uniform and nondiscriminatory and address complaints of violations of any provision of title III of the Help America Vote Act of 2002, including a violation that has occurred, is occurring, or is about to occur. A complaint filed under the complaint procedure must be in writing, notarized, and be signed and sworn by the person filing the complaint. The secretary of state is authorized to consolidate complaints. At the request of a complainant, the secretary of state shall establish a procedure for providing a review on the record. If the secretary of state determines there is a violation of a provision of title III of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 15481-15502], the secretary of state shall determine and provide an appropriate remedy. If the secretary of state determines that a violation of title III of the Help American Vote Act of 2002 has not occurred, the secretary of state shall dismiss the complaint and publish the results of the review. The secretary of state shall make a final determination with respect to a complaint within ninety days of the date the complaint is filed with the secretary of state, unless the complainant consents to a longer period of time for the secretary of state to make a determination. If the secretary of state fails to meet the ninety-day deadline for determining a complaint, the complaint must be resolved within sixty days under an alternative dispute resolution procedure.

SECTION 5. AMENDMENT. Section 16.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-04. Duties of the members of the election board during polling hours.

1. The election inspector shall supervise the conduct of the election to ensure all election officials are properly performing their duties at the

polling place. The election inspector shall assign duties so as to equally and fairly include both parties represented on the election board.

2. The election inspector shall assign ministerial duties to poll clerks, who shall carry out the ministerial duties assigned by the election inspector.
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. The designated poll clerks shall maintain the pollbooks. Each 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.
5. Each member of the election board shall remain on the premises of the polling place during the time the polls are open to prevent the occurrence of fraud, deceit, or other irregularity in the conduct of the election.
6. All members of the election board shall distribute ballots and other election materials to electors. An election judge from each party represented on the election board shall give any assistance requested by electors in marking ballots or operating electronic voting machines. ~~The election officers shall instruct voters on how to open and close voting machines and how to move the levers to cast and change votes system devices.~~
7. Each member of the election board shall maintain order in the polling place.
8. ~~All members of the election board at each precinct using an electronic voting system shall, before the polls are open, verify that each voting device in that precinct contains a ballot label that correctly lists the names of the candidates legally on the ballot for that precinct and verify that the booklets are all identical in arrangement.~~

SECTION 6. AMENDMENT. Section 16.1-06-03 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-03. Official ballots only to be used. The official ballot prepared by the county auditor or the local auditor or clerk must contain the name of each candidate whose name has been certified to or filed with such auditor or clerk in the manner provided in this title. Ballots other than official ballots prepared by the county auditor or local auditor or clerk may not be cast or counted in any election governed by this title. The list of officers and candidates and the statements of measures and questions to be submitted to the voters must be deemed an official ballot in precincts in which ~~voting machines~~ or electronic voting systems are used.

SECTION 7. AMENDMENT. Section 16.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-04. Form and quality of ballots generally. All official ballots prepared under this title for use in precincts in which ~~voting machines or~~ electronic voting systems are not used must:

1. Be a specific color, and the secretary of state shall prescribe a different color for each separate type of ballot used.
2. Be printed on uniform quality paper in an ink color suitable to make the ballot clearly legible.
3. Be of sufficient length to contain the names of all candidates to be voted for at that election.
4. Have the language "Vote for no more than _____ name (or names)" placed immediately under the name of each office.
5. Have printed thereon "Place a ~~crossmark~~ cross mark (X) by the name of the person for whom you wish to vote. To vote for a person whose name is not printed on the ballot write or paste that person's name in the blank space provided for that purpose."
6. Leave sufficient space for each office to write or paste a name, or names, as the case may be, in lieu of those printed on the ballot.
7. Provide a space enclosed in a square in which the voter may designate by a cross or other mark the voter's choice for each candidate opposite the name of that candidate, and the space must precede or follow the candidate's name on the same line in a uniform manner.
8. Provide a space enclosed in a rectangle and have printed next to the rectangle the following language: "All ballots, other than those used to vote absentee, must first be stamped and initialed by appropriate election officials in order to be counted." If a stamp with an inkpad is not required under section 16.1-06-18, the language next to the rectangle must be: "All ballots, other than those used to vote absentee, must first be initialed by appropriate election officials in order to be counted."

Any precinct that uses an electronic counting machine may require the use of a particular writing instrument to mark the ballot so the ballots may be properly counted.

In precincts in which electronic voting systems ~~purchased after June 30, 1985,~~ are used, the ballot ~~card~~ must contain the names of all candidates, the contents of measures as required by section 16.1-06-09, and the statements of questions to be submitted to the voters. The ballot ~~card~~ must otherwise be arranged in a manner and form approximating as far as possible the requirements of this section.

~~In precincts in which voting machines or electronic voting systems purchased before July 1, 1985, are used, the list of officers and candidates and the statements of measures and questions to be submitted to the voters must be arranged in a manner and form approximating the requirements of this section. In precincts in which electronic voting systems are used, the requirements of subsection 8 must be met for the ballot card and ballot envelope.~~

SECTION 8. AMENDMENT. Section 16.1-06-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-05. Form of general election ballot. The official ballots provided for in this title for partisan election at general elections in precincts in which electronic voting machines systems are not used must be prepared as follows:

1. The ballots must be of sufficient length and width to contain a continuous listing of the designation of all the offices to be voted for.
2. On the top left-hand side of such ballot must begin a continuous listing of the designation of each office to be voted for, and under the designation of each office all of the names of the candidates duly nominated for that office must be printed.
3. The names of candidates nominated for each office must appear under the designation of that office, and under each candidate's name must appear, in smaller type, the appropriate party designation for each candidate. Where a candidate has been nominated by petition, the designation under that candidate's name, in smaller type, must be "independent nomination".
4. The names of candidates under the designation of each office must be alternated in the printing of the official ballot in the same manner as is provided for the primary election ballot.
5. The size of type must be as specified by the secretary of state.

In precincts in which electronic voting machines systems are used, the list of offices and candidates and the statements of measures and questions to be submitted to the voters must be arranged in a manner and form approximating as far as possible the requirements of this section.

SECTION 9. AMENDMENT. Section 16.1-06-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-08. No-party ballot at general elections - Contents - Delivered to elector. There must be a separate no-party ballot at the general election upon which must be placed the names of all candidates who have been nominated on the no-party primary ballot at the primary election. Such ballots must be in the same form as the no-party primary ballot and must be delivered to each elector by the proper election official. In precincts in which ~~voting machines~~ or electronic voting systems are used, the list of offices and candidates must be entitled "no-party ballot" in a manner to clearly indicate the separation of the no-party list of offices and candidates from the party list of offices and candidates.

SECTION 10. 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, ~~the~~ electronic counting machines ~~must~~ 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 of this Act. 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 11. 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, ~~the~~ a system or systems must ~~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 of this Act. 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 12. AMENDMENT. Section 16.1-06-12 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-12. Definitions. As used in this title with regard to electronic voting systems:

1. "Automatic tabulating equipment" means an apparatus which automatically tabulates and counts votes recorded on ~~ballot cards~~ ballots or entered directly into a computer or other electronic device by means of a touchscreen or other data entry device and data processing machines which can be used for counting votes and tabulating results.
2. "Ballot ~~card~~" means, ~~for a handcount paper ballot or for an electronic voting system purchased after June 30, 1985 includes,~~ a tabulating ~~card~~ paper ballot, recorded by optical scan reader, containing the names of offices and candidates and the questions to be voted on, which is used in conjunction with the voting marking device and on which votes may be recorded. For an electronic voting system purchased before July 1, 1985, ballot card means a tabulating card on which votes may be recorded. For direct recording electronic voting systems, ballot means the ballot display provided by electro-optical devices showing the names and candidates and the questions to be voted on that allows a voter to directly enter choices into electronic storage with the use of a touchscreen or other data entry device.
3. "Ballot envelope" means the envelope in which the ballot card is enclosed and upon which the names of write-in candidates may be written.

4. ~~"Ballot label" means, for an electronic voting system purchased before July 1, 1985, the booklet or guide containing the names of offices, candidates, and questions to be voted on, which is used in conjunction with the voting device and voting card.~~
5. "Counting center" means the location or locations designated by the county auditor for the automatic tabulating and counting of ballots.
4. "Direct-recording electronic voting system" means a voting system that records votes by means of a ballot display provided by electro-optical devices that allows a voter to directly enter choices into electronic storage with the use of a touchscreen or other data entry device. An alphabetic keyboard may be employed as an entry device to facilitate voting for write-in candidates. A voter's choices are stored in the direct-recording electronic voting system's internal memory devices and added to the choices of all other voters.
6. 5. "Electronic voting system" means a system employing a, or the combination of electronic voting systems and devices authorized under this chapter, that may employ a marking device in conjunction with ~~ballot labels~~ ballots or ~~ballot cards~~ the use of a touchscreen or other data entry device and automatic tabulating equipment for the recording, tabulating, and counting of votes in an election.
6. "Electronic voting system device" means a single unit of an electronic voting system.
7. ~~"Voting Marking device" means a device in which ballot cards are used in connection with a punch device for the piercing of ballots by the voter, a device for marking ballots with ink or other substance, or any other method for recording votes on ballots in a manner that the votes may be tabulated and counted by automatic tabulating equipment.~~
8. "Optical scan" means a procedure in which votes cast on a paper ballot are tabulated by means of examining marks made in voting response locations on the ballot with an optical reader.

SECTION 13. AMENDMENT. Section 16.1-06-14 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-14. Requirements for electronic voting systems. Any electronic voting system used in an election in this state must:

1. Provide facilities for voting for nominated candidates, for persons not in nomination, and upon questions or measures submitted to the voters.
2. Permit each voter to vote for as many persons for any office as the voter is entitled to vote for, and must allow each voter to vote in primary elections for candidates for nomination by the political party of the voter's choice, but it must preclude each voter from voting for more persons for any office than the voter is entitled to vote for, from voting more than once for the same candidate or upon the same measure or question submitted to the voters, or voting the ballot of more than one political party in any primary election.

3. Permit each voter, insofar as is possible, by the replacement of spoiled ballots, to change the voter's vote for any candidate, or upon any measure or question submitted to the voters, up to the time the voter begins the final operation to register the voter's vote.
4. Permit and require voting in absolute secrecy, and must be so constructed and controlled that no person can see or know for whom any other elector has voted or is voting, ~~save except~~ a voter whom the person has assisted or is assisting in voting, as prescribed by law, and that no person may see or know the number of votes registered for any candidate or tamper with any mechanism.
5. ~~Have a counter, or other device, the register of which is visible at all times from the outside of the system, which must show during any period of tabulation the total number of votes tabulated during the period of tabulation and have a protective counter, or other device, which must record the cumulative total number of movements of the tabulating equipment.~~
- ~~6.~~ Be provided with a procedure by the use of which, immediately after the polls are closed, all voting is absolutely prevented.
- ~~7.~~ 6. Be so constructed that when properly operated it shall register or record correctly and accurately every vote cast.
- ~~8.~~ 7. Be so constructed that a voter may readily learn the method of operating it.
- ~~9.~~ 8. Permit voting by ballot card or by entering directly into a computer or other electronic device by means of a touchscreen or other data entry device.
- ~~10.~~ 9. Permit voting for presidential electors by making only one mark ~~or punch~~.
- ~~11.~~ 10. Permit write-in voting and absentee voting.
- ~~12.~~ 11. Permit the rotation of names of candidates on ballots as required by this title.
12. In the case of electronic systems procured after August 1, 2003, be capable of notifying a voter that the voter has overvoted, undervoted, and in the case of a primary election, cross-party voted before the voter casts a ballot.
13. In the case of direct-recording electronic voting systems, capable of preventing a voter from overvoting and cross-party voting before the voter casts a ballot.
14. In the case of direct-recording electronic voting systems, be capable of producing in random order a paper copy of each ballot cast on the system.
15. Ensure that any direct-recording electronic voting system procured or used in the state may not transmit uncounted votes or ballots through the internet.

16. Fulfill the criteria and standards established by the secretary of state according to section 16 of this Act.

SECTION 14. 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 election and before and 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 ~~and before and after the counting of the ballots at each election.~~ The testing must be done by the county auditor or county auditor's designee, and after each test, the testing materials, ~~programs,~~ and any preaudited ballots used during the test must be sealed and retained in the same manner as ~~paper ballots~~ 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 ~~ballet cards~~ 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 ~~that is conducted before the election~~ must be conducted at least one week before the election ~~and.~~ 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 must be sent a notice of the test by the county auditor at least one week before 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.

SECTION 15. AMENDMENT. Section 16.1-06-17 of the North Dakota Century Code is amended and reenacted as follows:

16.1-06-17. County auditor to provide ballots and other electronic voting system supplies. At the same time as other election supplies are provided and distributed, the county auditor shall provide to each precinct in the county using an electronic voting system:

1. A sufficient number of electronic voting system devices and ballots if the electronic voting system employs ballots.
2. Four facsimile diagrams of the entire face of the electronic voting system device as it will appear on election day.
3. Appropriate instruction material for the use of the electronic voting system devices.

4. All other materials required to carry ~~on~~ out the election process through the use of electronic voting systems.

SECTION 16. A new section to chapter 16.1-06 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to adopt rules for the purpose of certifying and decertifying electronic voting systems and electronic counting machines. The secretary of state may adopt rules according to subsection 3 of section 16.1-01-01 for certifying and decertifying electronic counting machines authorized in section 16.1-06-10.1 and electronic voting systems authorized in section 16.1-06-11, including any software, hardware, and firmware components used as a part of an electronic voting system or electronic counting machine for use and procurement in the state. The rules may:

1. Establish criteria and standards with which all electronic voting systems and electronic counting machines must comply.
2. Describe the procedures for electronic voting systems and electronic counting machines, any single device of an electronic voting system and electronic counting machine, and any update and enhancement made to them, to be certified and decertified for procurement and use in the state.
3. Define what constitutes a vote on each electronic voting system and electronic counting machine which has been certified for procurement in the state.
4. Describe the procedures for the secretary of state to follow when defining what constitutes a vote on any new electronic voting system and electronic counting machine, any single device of an electronic voting system and electronic counting machine, and any update and enhancement made to them.

An electronic voting system and electronic counting machine, a single device of an electronic voting system and electronic counting machine, and an update and enhancement made to them, in use by a county prior to August 1, 2003, must be reviewed by the secretary of state according to rules adopted under this section by April 1, 2004, and must meet the requirements of the rules, or must be replaced by another electronic voting system and electronic counting machine, a single device of an electronic voting system and electronic counting machine, and an update and enhancement made to them, that meets the requirements of the rules by January 1, 2006.

SECTION 17. 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 printed, in large type, containing full instructions to electors on obtaining and ~~preparing~~ 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 such cards to the election inspector in each election precinct who, ~~prior to~~ before the opening of the polls, shall post at least one of the cards in each booth or

compartment provided for the preparation of ballots and at least three of the cards in and about the polling place. Three of the official ballots without the official stamp thereon 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, shall deliver at least five copies of the newspaper publication or other copy of the complete text of any constitutional amendment or initiated or referred measure to such inspector of elections. Not less than three of ~~such~~ 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 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, ~~prior to~~ 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 18. AMENDMENT. Section 16.1-07-13 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-13. Registration of absent voters' ballots on ~~voting machines or on electronic voting systems~~. At polling places using ~~voting machines or~~ electronic voting systems, absent voters' ballots, if any, must be ~~registered on the voting machines or electronic voting systems entered in secrecy~~ by the two election judges. ~~The voting of absent voters' ballots on voting machines or voting systems must be done in secrecy by the two election judges, acting jointly, during the voting day at times when the voting machines or voting systems are not in use by voters, or after the close of the voting day and before the machines are unlocked for tallying.~~ The absentee electronic voting system ballots prepared pursuant to this section must be deposited in the ballot boxes and counted as other ballots. If the electronic voting system in use so provides, the actual electronic voting system ballot may be used as the absentee ballot.

SECTION 19. 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 - Stamping. The inspector or one of the election judges shall deliver ballots to the qualified electors. The inspector or judge delivering the paper ballot ~~or ballot card, ballot stub, and ballot envelope~~ shall inform each elector that if the ballot is not stamped and initialed by an election official it will be invalidated and to protect the elector's right to vote the elector should verify that the ballot has been stamped and initialed.

1. The paper ballot is considered stamped if it is either stamped with a stamp and an inkpad or has the stamped information preprinted on the paper ballot, as provided in section 16.1-06-18.
2. ~~When an electronic voting system is used, the inspector or judge delivering the ballot card, ballot stub, and ballot envelope shall inform each elector that if the ballot stub is detached by anyone except an election inspector or judge, the ballot card and ballot envelope may not be deposited in the ballot box, but must be marked spoiled and placed with the other spoiled ballots.~~
3. 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.

- 4- 3. Before delivering any paper ballot to an elector, the inspector or judge shall stamp once in the rectangle provided on the ballot ~~or ballot card and ballot envelope~~, if required under subsection 1, the designation "official ballot" and the other words provided for in section 16.1-06-18, and also shall initial the ballot. Failure to stamp and initial a paper ballot or ballot card in the proper place does not invalidate the ballot ~~or ballot card~~, but a complete failure to stamp and initial a paper ballot or ballot card does invalidate the ballot ~~or ballot card~~. ~~Failure to stamp and initial a ballot envelope in the proper place on the ballot envelope does not invalidate the ballot envelope, but complete failure to stamp and initial a ballot envelope that has been used to write in a vote does invalidate the ballot envelope and the vote found thereon.~~

SECTION 20. AMENDMENT. Section 16.1-13-24 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-24. Preparation of Voting on electronic voting system ballots devices. Except as provided in this section, voting procedures for electronic voting systems must be ~~the same as for similar or as close as practicable to regular paper ballot voting.~~ After marking the ballot envelope or punching the ballot card for electronic voting systems, the voter shall place the ballot inside the ballot envelope and return it to the election judge. The judge shall remove the stub and deposit the envelope with the ballot inside the ballot box. The ballot stub must be deposited in an envelope provided for that purpose. Ballot cards from which the ballot stub has been detached by anyone except an election judge may not be deposited in the ballot box but must be marked spoiled and placed with other spoiled ballots. Voting procedures on direct-recording electronic voting system devices must follow as close as practicable the procedures for voting by paper ballot, with the exception of voting on a ballot display provided by electro-optical devices which shows the names and candidates and the questions to be voted on and which allows a voter to directly enter choices into electronic storage with the use of a touchscreen or other data entry device.

SECTION 21. AMENDMENT. Section 16.1-13-25 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-25. Elector may write or paste name on ballot - Counting. The provisions of this title do not prevent any elector from writing or pasting on the paper ballot or ballot envelope, or in the case of direct-recording electronic voting system devices, entered by touchscreen or other data entry device, the name of any person for whom the elector desires to vote, and such vote must be counted the same as if printed on the ballot and marked by the elector.

SECTION 22. AMENDMENT. Section 16.1-13-26 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-26. Name written or pasted on ballot evidence of vote without marking "x". If a name has been written or pasted, or in the case of direct-recording electronic voting system devices, entered by touchscreen or other data entry device, opposite an office to be voted for, it must be deemed sufficient evidence that the person depositing casting the ballot ~~or ballot envelope~~ intended to vote for the person whose name is written ~~or pasted~~, or entered thereon, and not for the person whose name originally was printed on the ballot, whether or not the elector made a mark or cross opposite the written ~~or pasted~~, or entered name.

SECTION 23. AMENDMENT. Section 16.1-13-29 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-29. Election booths or compartments - Number required - Expense. The inspector of elections shall provide a sufficient number of voting booths or compartments in the inspector's polling place, which must be designed to enable the elector to mark, or in the case of direct-recording electronic voting system devices, enter by touchscreen or other data entry device, the elector's ballot screened from observation. The number of booths or compartments in precincts ~~in which voting machines are not used~~ may not be less than one for each one hundred fifty electors or fraction thereof in the precinct. The expense of providing the booths or compartments must be paid in the same manner as other election expenses. One ~~voting machine or~~ electronic voting system device must be provided ~~for each two hundred electors or fraction thereof in the~~ each precinct.

SECTION 24. AMENDMENT. Section 16.1-13-32 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-32. Securing new ballot upon spoiling of others. If any elector spoils a ballot, ~~including an electronic voting system ballot,~~ the elector may obtain others successively, one at a time, not exceeding three in all, upon returning each spoiled ballot. Each paper ballot returned must be canceled immediately and, together with those not distributed to the electors, must be preserved and secured in sealed packages and returned to the county auditor from whom received.

SECTION 25. AMENDMENT. Section 16.1-13-33 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-33. ~~Voting machines - Electronic voting systems - Election laws apply.~~ All provisions of law relating to the conduct of elections apply as closely as possible to elections at which ~~voting machines or~~ electronic voting systems are used.

SECTION 26. A new section to chapter 16.1-13 of the North Dakota Century Code is created and enacted as follows:

Voters casting ballots after regular poll closings - Provisional ballots.
An individual who votes after the regular poll closing time in an election in which a federal office appears as a result of a federal or state court order or any other order extending the time established for closing the polls under state law in effect ten days before the date of that election may only vote in that election by casting a provisional ballot. The ballot must be marked as a provisional ballot and must be separated and held apart from other ballots cast by those not affected by the order. The secretary of state shall approve the form of any provisional ballot and may prescribe any procedures the secretary of state determines to be necessary to facilitate the casting, secrecy, and counting of provisional ballots.

SECTION 27. AMENDMENT. Section 16.1-15-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-01. Ballots void and not counted - Part of ballot may be counted.

1. In the canvass of the votes at any election, a ballot is void and may not be counted if:
 - a. It is not endorsed with the official stamp and initials as provided in this title; or

- b. It is impossible to determine the elector's choice from the ballot or parts of a ballot, and in the case of electronic voting systems, based upon the criteria established by the secretary of state for counting votes on each electronic voting system authorized for procurement and use in the state according to section 16 of this Act.
2. If a ballot is marked so only a part of the voter's intention can be determined, the election judges shall count such part. If an elector votes for more than the number of persons to be elected to any office, the elector's ballot may be invalidated only insofar as the elector's vote for such office is concerned, and the balance of the elector's ballot, if otherwise proper, may not be invalidated. However, at primary elections only, a party ballot is void if the elector votes for candidates of more than one party.

SECTION 28. AMENDMENT. Section 16.1-15-09 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-09. ~~Voting machines~~ - Electronic voting systems - Electronic counting machines - Returns.

1. Election officers shall make returns of votes cast upon ~~voting machines and on~~ electronic voting systems and counted on electronic counting machines for all candidates and for any measures or questions in the same manner as now or hereafter provided by law or rule insofar as such provisions of law or rule are applicable.
2. Within the ability of ~~the~~ an electronic counting machine to accurately do so, all ballots not containing write-in votes may be counted by the machine prior to the counting and recording of the ballots containing write-in votes.
3. Votes cast upon a direct-recording electronic voting system must be tabulated from the voter's choices stored in the system's internal memory devices that are added to the choices of all other voters.
4. The county auditor shall designate the public place or places where electronic voting system ballots and ballots to be counted on electronic counting machines must be delivered by the election inspector and the two election judges to be counted in the presence of the election inspector and the two election judges. The county auditor shall designate the public place or places where votes cast upon direct-recording electronic voting systems are to be counted.
5. All ~~such~~ counting centers used for counting votes cast upon electronic voting ~~system ballots~~ systems shall have tabulating equipment that has an element that generates a printed record at the beginning of its operation which verifies that the tabulating elements for each candidate position and each question and the public counter are all set at zero. The tabulating equipment must also be equipped with an element that generates a printed record at the end of its operation of the total number of voters whose ballots have been tabulated, the total number of votes cast for each candidate on the ballot, and the total number of votes cast for or against any measure appearing on the ballot. ~~Both printed~~

~~records must be certified by the~~ The election inspector and the two election judges must certify both printed records.

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.

SECTION 29. AMENDMENT. Section 16.1-15-10 of the North Dakota Century Code is amended and reenacted as follows:

16.1-15-10. Failure of automatic tabulating or electronic counting equipment - Counting by alternate method. If the automatic tabulating or electronic counting equipment used as part of any electronic voting system, any electronic voting system device, or any electronic ~~voting~~ machine fails to operate during the ballot count at any election, the ballots must be counted by an alternate method.

SECTION 30. AMENDMENT. Subsection 5 of section 16.1-16-01 of the North Dakota Century Code is amended and reenacted as follows:

5. ~~Except for~~ For recounts conducted by ~~political subdivisions other than~~ counties of federal, state, district, and county offices, measures, and questions, ~~recounts must be conducted by~~ the county auditor ~~who 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, ~~machine,~~ 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. 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 shall perform the duties required of the county auditor by this section. ~~The~~ For recounts conducted by political subdivisions other than counties of local offices, measures, and questions, ~~the~~ election officer in a political subdivision ~~other than a county which is conducting a recount~~ 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.

SECTION 31. 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 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 to

preserve all the paper ballots, and electronic voting system ballots, and ~~voting machine~~ associated records until the contest has been finally determined.

SECTION 32. AMENDMENT. Section 40-21-09 of the North Dakota Century Code is amended and reenacted as follows:

40-21-09. Election districts in council cities - Division and consolidation by ordinance - Ballots to be kept separate by wards. Each city operating under the council form of government in which council members are elected at large constitutes an election district or voting precinct, and in all other cities each ward constitutes an election district or voting precinct. Whenever the number of electors in any two or more contiguous wards does not exceed one hundred as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate those two or more wards into one precinct for voting purposes. In any city containing less than four hundred electors as determined by the number of votes cast at the last city election, the council, by ordinance, may consolidate all the wards of the city into one precinct for voting purposes. An ordinance dividing or consolidating wards must be passed and takes effect before the time of giving notice of the election. Wards and precincts established under this section constitute election districts for all state, county, and city elections. In city elections, separate ballot boxes and pollbooks must be provided and kept for each precinct. The terms "wards", "precincts", and "election districts" have the same meaning except where two or more wards are consolidated into one precinct for voting purposes or where one ward is divided into more than one precinct for voting purposes. This section does not prohibit the use of one building as the election polling place for more than one ward or the installation of ~~voting machines~~ electronic voting systems from separate wards in one building.

SECTION 33. REPEAL. Sections 16.1-06-10, 16.1-06-13, 16.1-06-24, and 16.1-15-11 of the North Dakota Century Code are repealed.

SECTION 34. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 16, 2003
Filed April 16, 2003

CHAPTER 172

SENATE BILL NO. 2394

(Senators Krebsbach, J. Lee, Nelson, Traynor)
(Representatives Froelich, Koppelman)

CENTRAL VOTER FILE

AN ACT to create and enact chapter 16.1-02 and two new sections to chapter 16.1-05 of the North Dakota Century Code, relating to providing a central voter file, verifying voter eligibility, and creating precinct maps and precinct locators; to amend and reenact sections 16.1-01-04, 16.1-05-06, and 54-09-08 of the North Dakota Century Code, relating to qualifications of voters, challenging voters, and fees received by the secretary of state; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-01-04. Qualifications of electors.

1. Every citizen of the United States who is: eighteen years or older; a resident of this state; and has resided in the precinct at least thirty days next preceding any election, except as otherwise provided in regard to residency in chapter 16.1-14, is a qualified elector.
2. ~~Every~~ For the purposes of this title, every qualified elector of the state may have only one voting residence, shown by an actual fixed permanent dwelling, establishment, or any other abode.
3. ~~A person's voting~~ Except as otherwise provided in this section, an individual's residence must be determined in accordance with the rules for determining residency as provided in section 54-01-26.
4. Pursuant to section 2 of article II of the Constitution of North Dakota, voting by ~~persons~~ individuals convicted and sentenced for treason or felony must be limited according to chapter 12.1-33.
5. For the purposes of this title, an individual may not be deemed to have gained or lost a residence solely by reason of the individual's presence or absence while enrolled as a student at a college, university, or other postsecondary institution of learning in this state.
6. For the purposes of this title, a member of the armed forces of the United States may not be deemed to have gained or lost a residence in this state solely by reason of the member being stationed on duty in this state.
7. For the purposes of this title, an individual may not be deemed to have lost residence in the individual's precinct or in the state by reason of the individual engaging in temporary government service or private employment outside the individual's precinct or outside the state.

SECTION 2. Chapter 16.1-02 of the North Dakota Century Code is created and enacted as follows:

16.1-02-01. Permanent central voter file. A permanent, centralized electronic data base of voters, to be known as the central voter file, is established with the offices of the secretary of state and county auditors linked together by a centralized statewide system. The county auditor is chief custodian of the central voter file records in each county. The secretary of state is responsible for maintaining the central voter file. The central voter file must be accessible by the secretary of state and all county auditors for purposes of preventing and determining voter fraud, making changes and updating the central voter file, and generating information, including pollbooks, reports, inquiries, forms, and voter lists.

16.1-02-02. Costs of creating and maintaining a central voter file. The creation of the central voter file and its maintenance through June 30, 2009, must be paid for with funds from the state's election fund, provided the election fund contains adequate funding to create and maintain the central voter file. The creation of the central voter file and its maintenance through June 30, 2009, may not be paid for from funds in the secretary of state's budget, the state's general fund, or from county funds. Beginning July 1, 2009, the offices required to perform the functions and duties of this chapter shall bear the costs incurred in performing those duties and the secretary of state shall pay the costs of operating and maintaining the central voter file.

16.1-02-03. Secretary of state to establish the central voter file with department of transportation and county auditors.

1. Not later than the primary election in 2006, the secretary of state shall establish the central voter file in cooperation with the department of transportation and county auditors.
2. The secretary of state shall establish the initial central voter file from records maintained by the department of transportation. Each county auditor shall compare the initial central voter file against all precinct pollbooks used in the auditor's county during and created from the general elections in the two previous election years and any reasonably reliable updates made by the county auditor since the general elections in the two previous election years. Any individual contained in the initial central voter file who voted at either of the general elections in the two previous election years must be designated as "active" in the initial central voter file. Any individual contained in the initial central voter file who did not vote at either of the general elections in the two previous election years must be designated as "inactive" in the initial central voter file.
3. Each individual contained in the initial central voter file must be assigned a unique identifier. An individual's unique identifier must be created from unique information and data obtained from records maintained by the department of transportation and the pollbooks from the general elections in the two previous election years. If it is not possible to assign a unique identifier to an individual contained in the initial central voter file, a unique identifier must be randomly generated and assigned to the individual.

4. The secretary of state shall adopt rules for generating and assigning a unique identifier to each individual contained in the central voter file according to section 16.1-02-11 and subsection 3 of section 16.1-01-01.
5. When establishing the initial central voter file from the records maintained by the department of transportation and the pollbooks from the general elections in the two previous election years, the secretary of state and county auditors shall attempt to correct address errors and misspellings of names.

16.1-02-04. Precinct boundaries changed - Change to the central voter file. When the boundaries of a precinct are changed, the county auditor shall immediately update the voter records for that precinct in the central voter file to accurately reflect those changes.

16.1-02-05. Entry of new voters into the central voter file - Query of the central voter file for double voting - Verification by mail - Challenges - Post election verification.

1. Within sixty days following an election, the county auditor shall enter the name and required information of each individual who voted at the last election who is not already contained in the central voter file and update any required information requested and obtained at the last election for any individual contained in the central voter file.
2. The secretary of state, with the assistance of the county auditors, within seventy days following an election, shall query the central voter file to determine if any individual voted more than once during the preceding election. The secretary of state shall immediately notify the county auditor and state's attorney in each affected county for further investigation.
3. The county auditor shall mail to a random sampling of individuals contained in the central voter file a notice stating the individual's name and address as the name and address appear in the central voter file. The random sampling must be determined in the manner established by the secretary of state. The notice must request the individual to notify the county auditor if there is any mistake in the information.
4. Upon return of any nonforwardable mail from an election official, the county auditor shall ascertain the name and address of that individual. If the individual is no longer at the address recorded in the central voter file, the county auditor shall designate the individual as "challenged" in the central voter file. An individual designated as "challenged" shall comply with section 16.1-05-06 before being allowed to vote at the next election in that precinct. If a notice mailed at least sixty days after the return of the first nonforwardable mail is also returned by the postal service, the county auditor shall designate the individual as "inactive" in the central voter file.
5. Within ninety days after an election, the county auditor shall send the notice provided for under subsection 3 to each individual who was challenged on election day according to section 16.1-05-06. If a notice is returned as not deliverable, the county auditor shall attempt to determine the reason for the return. A county auditor who does not receive or obtain satisfactory proof of an individual's eligibility to vote

shall immediately notify the state's attorney to conduct an investigation of the individual's eligibility to vote in that election.

16.1-02-06. Reporting deceased individuals and changes of names - Changes to records in the central voter file.

1. The state health officer 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 who has died while maintaining residence in this state since the last report. Within thirty days after receiving a report, the secretary of state shall designate each individual included in the report as "deceased" in the central voter file. The secretary of state shall prepare and distribute a list of individuals designated as "deceased" to each county auditor.
2. The state health officer 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 marriage since the last report. Within sixty days after receiving a 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.
3. After receiving notice of death of an individual who has died outside the county, the county auditor shall designate that individual as "deceased" in the central voter file. Notice must be in the form of a printed obituary or a written statement signed by an individual having knowledge of the death of the individual.

16.1-02-07. Reporting individuals placed under guardianship and changes of names - Changes to records in the central voter file.

1. 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 who has been placed under a guardianship and as a result has been deprived of the legal right to vote since the last report. Within thirty days after receiving a report, the secretary of state shall designate each individual included in the report as "ineligible" in the central voter file. The secretary of state shall prepare and distribute a list of individuals designated as "ineligible" to each county auditor.
2. The state court administrator shall provide for the regular reporting to the secretary of state the name, address, and date of birth, if available, of each individual eighteen years of age or older whose legal right to vote has been restored by the court since the last report. Within thirty days after receiving a report, the secretary of state shall remove the "ineligible" designation of the individual in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.
3. 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.

16.1-02-08. Reporting incarcerations - Changes to records in the central voter file.

1. The director of the department of corrections and rehabilitation shall provide for the regular reporting to the secretary of state the name, address, date of birth, date of sentence, effective date of the sentence, and county in which the conviction occurred, if available, of each individual who has been convicted of a felony and incarcerated under the legal and physical custody of the department of corrections and rehabilitation since the last report. Within thirty days after receiving a report, the secretary of state shall designate each individual in the report as "ineligible" in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.
2. The director of the department of corrections and rehabilitation shall provide for the regular reporting to the secretary of state the name, address, and date of birth, if available, of each individual previously convicted of and incarcerated for a felony whose civil rights have been restored as provided in chapter 12.1-33 since the last report. Within thirty days after receiving a report, the secretary of state shall remove the "ineligible" designation of the individual in the central voter file. The secretary of state shall prepare and distribute a list of those individuals to each county auditor.

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".

16.1-02-10. Posting voting history - Failure to vote - Individuals designated "inactive". Within ninety days after each election, each county auditor shall post the voting history for each individual who voted in the election. After the close of the 2008 calendar year, the secretary of state shall determine if any individual has not voted during the preceding four years and shall change the status of each such individual to "inactive" in the central voter file. The secretary of state shall prepare a report to each county auditor which contains the name of each individual who has been designated as "inactive" in the central voter file. Although not counted in an election, a late absentee ballot from an individual may not be used to designate an individual as "inactive" in the central voter file.

16.1-02-11. Secretary of state to adopt rules for the purpose of maintaining the central voter file. The secretary of state shall adopt rules and procedures according to subsection 3 of section 16.1-01-01 for the purpose of implementing this chapter and for updating and maintaining the central voter file. The rules must:

1. Provide for the establishment and maintenance of a central voter file.
2. Provide for the generation and assignment of a unique identifier to each individual contained in the central voter file.
3. Provide procedures for entering data into the central voter file.
4. Provide for any additional information to be requested of and obtained from an individual which is to be maintained in the central voter file, not already provided by law, but necessary for the proper administration of the central voter file.
5. Provide for the exchange of records maintained by the appropriate state and county agencies and officials for receiving regular reports regarding individuals and records of individuals contained in the central voter file.
6. Allow each county auditor and the secretary of state to add, modify, and delete information from the central voter file to ensure accurate and up-to-date records.
7. Allow each county auditor and the secretary of state to have access to the central voter file for review, search, and inquiry capabilities.
8. Provide security and protection of all information contained in the central voter file and to ensure that unauthorized access and entry is prohibited.
9. Provide a system for each county to identify the precinct to which an individual should be assigned for voting purposes.

16.1-02-12. Information contained and maintained in the central voter file. The central voter file must contain the following information for each individual included in the file:

1. The complete 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. A designation showing whether the individual's ability to vote in a precinct has been inactivated as a result of death, incarceration, or because of a change in guardianship status, or because the individual is no longer a resident of the precinct according to section 16.1-01-04.
6. A designation showing whether the individual must be challenged according to section 16.1-05-06.
7. The county, legislative district, city or township, school district, county commissioner district, if applicable, precinct name, and precinct number in which the individual resides.
8. Beginning in 2008, four years of an individual's voting history, if applicable.
9. Any other information requested of and obtained from the individual deemed necessary by the secretary of state for the proper administration of the central voter file.

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 fifteenth day before an election. 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 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. A designation showing whether the individual must be challenged according to section 16.1-05-06.
6. The county, legislative district, city or township, school district, county commissioner district, if applicable, precinct name, and precinct number in which the individual resides.
7. Any other information requested of and obtained from the individual deemed necessary by the secretary of state for the proper administration of the pollbook.

16.1-02-14. Voter lists and reports to be made available for jury management. By February first of each year, the secretary of state shall transmit

information from the central voter file to the state court administrator for the purpose of compiling the master list of jurors under chapter 27-09.

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, 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. 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.

16.1-02-16. Violations - Penalties.

1. An individual may not intentionally:
 - a. Remove an individual from the central voter file or change a record of an individual contained in the central voter file in a manner or for a purpose not authorized by law; or
 - b. Add a name of an individual to the central voter file or add a record of an individual contained in the central voter file in a manner or for a purpose not authorized by law.
2. A deputy, clerk, employee, or other subordinate of a county auditor who has knowledge or reason to believe that a violation of this chapter has occurred shall immediately transmit a report of the knowledge or belief to the county auditor, except if the suspected violation may have been committed by the county auditor, in which case the report must be immediately transmitted to the state's attorney, together with any evidence of the violation. A county auditor who has knowledge or reason to believe that a violation of this chapter has occurred shall immediately transmit a report of the knowledge or belief to the state's attorney of the county where the violation is believed to have occurred, together with any evidence of the violation. The county auditor shall also immediately send a copy of the report to the secretary of state.
3. An individual who intentionally violates any provision of this chapter is guilty of a class A misdemeanor, unless a different penalty is specifically provided by law.

SECTION 3. AMENDMENT. Section 16.1-05-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-05-06. Challenging right of person to vote - Identification or affidavit required - Penalty for false swearing - Optional poll checkers.

1. One poll challenger appointed by the district chairman of each political party represented on the election board is entitled to be in attendance at each polling place. Individual poll challengers may be replaced at any time during the hours of voting, but no more than one poll challenger

from each political party is entitled to be in attendance at each polling place at any one time.

2. ~~The members~~ Any member of the election board ~~and poll challengers~~ may challenge the right of ~~anyone~~ an individual to vote ~~whom they know or have~~ if the election board member has knowledge or has reason to believe the individual is not a qualified elector. ~~Members~~ A poll challenger may request members of the election board ~~or poll challengers may~~ to challenge a voter if they know or have the right of an individual to vote if the poll challenger has knowledge or has reason to believe the individual is not a qualified elector of the precinct. A challenge may be based upon any one of the following:
 - a. ~~The person~~ individual offering to vote does not meet the age or citizenship requirements.
 - b. ~~The person~~ individual offering to vote has never voted in the precinct before, the name of the individual offering to vote does not appear in the pollbook generated from the central voter file, and the individual fails to provide reasonable evidence of residency in the precinct.
 - c. Except as provided in section 16.1-01-05, the ~~person~~ individual offering to vote physically resides outside of the precinct.
 - d. The ~~person~~ individual offering to vote does not meet the residency requirements provided in section ~~16.1-01-05~~ 16.1-01-04.
 - e. The individual offering to vote fails or refuses to provide an appropriate form of identification as requested under subsection 3.
3. ~~A poll challenger or~~ If after an election board member may request has requested that the ~~person~~ individual offering to vote provide an appropriate form of identification to address any of the voting eligibility concerns listed in subsection 2- ~~if and the identification is not provided or does not adequately resolve~~ confirm the voter eligibility concerns of the poll challenger or election board member of the challenged individual, the challenged ~~person~~ individual may not vote unless the challenged ~~person~~ individual executes an affidavit, acknowledged before the election inspector, that the challenged ~~person~~ individual is a legally qualified elector of the precinct.
4. The affidavit must include:
 - a. The name and present address 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 verify the affidavits must also be prominently displayed at the polling place in a form prescribed by the secretary of state. ~~Any person~~ 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.
 6. ~~The county auditor shall verify randomly at least ten percent of the affidavits signed in the county and shall report all known or suspected violations to the state's attorney for investigation and possible prosecution.~~
 7. In addition to the poll challenger, not more than two poll checkers appointed by the district chairman of each political party represented on the election board may be in attendance at each polling place, provided ~~such~~ the poll checkers do not interfere with the election process or with the members of the election board in the performance of their duties. The poll challengers and poll checkers must be qualified electors of the district in which they are assigned.
 8. ~~7.~~ No poll challenger or checker may be a member of the election board.
 8. The district chairman shall notify the county auditor of each county contained in the legislative district before the third day before the day of the election of the names of individuals whom the district chairman has appointed to serve as poll challengers and poll checkers in the precincts in the legislative district.

SECTION 4. A new section to chapter 16.1-05 of the North Dakota Century Code is created and enacted as follows:

Poll clerks to check identification and verify eligibility - Poll clerks to request, correct, and update incorrect information contained in the pollbook.

1. Before delivering a ballot to an individual according to section 16.1-13-22, the poll clerks shall request the individual to show a driver's license issued by the state, another form of identification displaying a photograph of the individual and the individual's date of birth, or another appropriate form of identification prescribed by the secretary of state. If an individual offering to vote fails or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct. After verifying that the individual's name is contained in the pollbook generated from the central voter file, poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address.
2. If the individual's name is not contained in the pollbook generated from the central voter file, the individual may be challenged according to section 16.1-05-06 and the individual's name must be recorded in the

pollbook. The poll clerks shall request and obtain any additional information for the individual required to be included in the pollbook.

3. When verifying an individual's eligibility or when entering the name of an individual into the pollbook, poll clerks shall request, correct, and update any incorrect or incomplete information about an individual that is required to be contained in the pollbook generated from the central voter file.
4. Poll clerks shall direct an individual who is attempting to vote in the incorrect precinct to the proper precinct and voting location.

SECTION 5. A new section to chapter 16.1-05 of the North Dakota Century Code is created and enacted as follows:

County auditor to provide election board members with precinct maps or precinct finder. The county auditor shall provide each precinct election board with an accurate precinct map or precinct finder to assist the election board member in determining whether an address is located in that precinct and for determining which precinct and polling location to which to direct an individual who may be attempting to vote incorrectly in that precinct.

SECTION 6. 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 54-09-10 and 54-09-11. At the close of each fiscal year, the secretary of state shall transfer any unobligated balance remaining in the fund exceeding seventy-five thousand dollars to the general fund.

Approved April 16, 2003

Filed April 16, 2003

CHAPTER 173

HOUSE BILL NO. 1410

(Representatives Iverson, Eckre, Ekstrom, Thoreson)

POLITICAL PARTY ORGANIZATION

AN ACT to amend and reenact section 16.1-03-03, subsection 2 of section 16.1-03-07, and section 16.1-03-11 of the North Dakota Century Code, relating to political party organization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-03-03 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-03. Caucus business and elections - Political parties entitled to elect committeemen.

1. Each precinct caucus shall elect a chairman, committeemen as provided in subsection 3, and other officers as may be provided by party rules. The caucus may also discuss party policies, candidates, and any other business as prescribed by party rules.
2. No political organization is entitled to elect a precinct committeeman at its precinct caucus unless:
 - a. The organization nominated and had printed on the ballot at the last preceding presidential election the names of a set of presidential electors pledged to the election of the party's candidates for president and vice president or a candidate for governor; and
 - b. The candidates provided for in subdivision a received at least five percent of the total vote cast for presidential electors or governor within this state at that election.
3. Each political party in each voting precinct of this state, otherwise qualifying under subsection 2, is entitled to elect one precinct committeeman for each two hundred fifty votes, or fraction thereof, cast for the party's presidential electors in the precinct in the last presidential election. Each precinct is entitled to at least one precinct committeeman for each party which qualifies under subsection 2. Each precinct committeeman must be an elector of the precinct in which the committeeman resides and must be elected for a two-year term.
4. ~~The caucus chairman shall notify the county auditor of those precinct committeemen elected.~~

SECTION 2. AMENDMENT. Subsection 2 of section 16.1-03-07 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~The newly elected chairman shall notify the secretary of state of the names of the party officers selected. The secretary of state shall certify~~

~~the names of the party officers to the county auditors. If the office of chairman becomes vacant, the vice chairman shall hold the office until the next regular election for the office or until a new chairman is selected by the district committee for the balance of the term, whichever occurs first. The secretary of state must be notified of any changes in membership of the district's committee officers by the district committee and must notify the county auditors of any changes.~~

SECTION 3. AMENDMENT. Section 16.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

16.1-03-11. State committee - Meetings - Organization - Vacancies. The state committee shall meet on or before July first of each odd-numbered year. The committee shall organize by selecting a chairman, vice chairman, secretary, and treasurer and by adopting rules and modes of procedure. The party's bylaws must be filed with the secretary of state. The officers elected need not be members of the committee, but they shall become voting members of the committee after their election. The Within thirty days following the state committee's organization, the newly elected chairman shall notify the secretary of state of the names of the party officers selected and the names and addresses of the party's district chairmen. These officers, with any other persons provided for by the party's bylaws and as the state committee designates, constitute the executive committee of the state committee. If the office of chairman becomes vacant, the vice chairman holds the office until the next regular election for the office or until a new chairman is selected by the state committee for the balance of the term, whichever occurs first. A vacancy in an office of the state committee, other than chairman and a party district chairman, must be filled upon a majority vote of the state committee. The chairman of the state committee may temporarily fill any vacancy existing on the state committee until the state committee convenes to fill the vacancy. The secretary of state must be notified of any changes in membership of the state's committee officers or the party's district chairmen.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 174

SENATE BILL NO. 2288

(Senators Dever, Nelson, O'Connell)
(Representatives Carlisle, Delmore, Haas)

PRESIDENTIAL PREFERENCE CAUCUSES

AN ACT to create and enact a new section to chapter 16.1-03 of the North Dakota Century Code, relating to requirements for political parties conducting presidential preference caucuses; to amend and reenact sections 16.1-11-15, 16.1-11-30, and 16.1-12-02 and subsection 2 of section 28-32-01 of the North Dakota Century Code, relating to circulating petitions to establish a political party, independent nominations for president of the United States, and rules adopted by the secretary of state for the presidential preference contest; and to repeal sections 16.1-11-02, 16.1-11-02.1, 16.1-11-02.3, 16.1-11-03, and 16.1-11-04 of the North Dakota Century Code, relating to the presidential preference contest.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 16.1-03 of the North Dakota Century Code is created and enacted as follows:

Political parties may conduct presidential preference caucuses.

1. On one designated day, following presidential nominating contests in the states of Iowa and New Hampshire and prior to the first Wednesday in March in every presidential election year, every political party entitled to a separate column under section 16.1-11-30 may conduct a presidential preference caucus.
2. Before August fifteenth of the odd-numbered year immediately preceding the presidential election year, the secretary of state shall designate the day after consulting with and taking recommendations from the two political parties casting the greatest vote for president of the United States at the most recent general election when the office of president of the United States appeared on the ballot.
3. A political party entitled to conduct a presidential preference caucus must notify the secretary of state before September first of the odd-numbered year immediately preceding the presidential election year if the political party will conduct a presidential preference caucus in that presidential election year according to this section. If selected by a political party, the results of a presidential preference caucus must be used to instruct delegates attending the political party's national political convention.
4. A political party that establishes itself according to section 16.1-11-30 after September first of the odd-numbered year immediately preceding the presidential election year and before the day designated by the secretary of state according to subsection 2 is entitled to conduct a presidential preference caucus according to this section. The political party is entitled to conduct a presidential preference caucus on the day

designated by the secretary of state according to subsection 2 and shall notify the secretary of state of the political party's intent to conduct a presidential preference caucus at the time it establishes itself.

5. Before the presidential preference caucuses, the legislative district chairman of each participating party shall issue the call for the presidential preference caucus, which may be held in conjunction with any other caucuses or meetings of the political party that are scheduled for the purpose of endorsing legislative candidates or selecting officers of the legislative district, at least thirty days before the time set for holding the caucus. At the time of making the call, the district chairman shall notify the secretary of state of the information contained in the call, which must include the following:
 - a. Name of the party.
 - b. Precinct number or name.
 - c. Date of caucus.
 - d. Place of caucus.
 - e. Hours of caucus.
 - f. A statement of the business to be conducted, including the nomination of a candidate for president of the United States.
 - g. The name of the district chairman issuing the call.
6. The district chairman shall provide ten days' published notice in the official county newspaper in circulation within each precinct in the district. The notices must contain that information set forth in subsection 5.
7. A presidential preference caucus must be conducted in the manner provided in this chapter with the exception that a political party is not required to hold individual caucuses in every election precinct throughout a legislative district. Only those persons who either voted or affiliated with the political party at the last general election or intend to vote or affiliate with the political party at the next general election may participate and vote at the presidential preference caucus.
8. Unless specifically forbidden by national party rules, the voting delegates selected by political parties are bound to cast their first ballots at the political party's national convention in the same proportion as the total votes cast for all candidates for president of the United States at the political party's presidential preference caucus. If political party rules do not allow apportionment of a delegate and such an apportionment appears necessary because a candidate did not receive more than one-half of a delegate, those partial delegates must be assigned to the candidate receiving the highest number of votes at the caucus. If a candidate withdraws before voting begins on the first ballot, delegates obligated to vote for the candidate on the first ballot are released from that obligation.

9. Every political party entitled to a separate column under section 16.1-11-30 that chooses not to conduct a presidential preference caucus is entitled to nominate a presidential candidate and select presidential electors for inclusion on the general election ballot in the presidential election year according to section 16.1-03-14.

SECTION 2. AMENDMENT. Section 16.1-11-15 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-15. Nominating petition not to be circulated more than ninety days prior to filing time. No nominating petition provided for in ~~this chapter~~ sections 16.1-11-06 and 16.1-11-11 may be circulated or signed more than ninety days previous to the time when any petition must be filed under the provisions of this chapter. Any signatures to a petition secured more than ninety days before that time may not be counted.

SECTION 3. AMENDMENT. Section 16.1-11-30 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-30. Separate column on primary election ballot required for each political party. Any party that had printed on the ballot at the last preceding presidential election the names of a set of presidential electors pledged to the election of the party's candidates for president and vice president or a candidate for governor and those candidates for presidential electors or governor received at least five percent of the total vote cast for presidential electors or the office of governor within this state at that election or has organized according to all the requirements of chapter 16.1-03 must be provided with a separate column on primary election ballots.

Any other political organization is entitled to endorse candidates or have candidates petition to be included on the primary ballot in a consolidated column or on a special election ballot, if a petition signed by at least seven thousand qualified electors of this state is filed with the secretary of state before four p.m. of the sixtieth day before a primary or special election, naming the political organization, stating the platform principles of the party, and requesting the names of its candidates to be included on the state's primary ballot in a consolidated column. If the petition is mailed it must be in the possession of the secretary of state before four p.m. on the sixtieth day prior to a primary or special election. Candidates of that party are entitled to the same rights and privileges as those of other parties. Petitions circulated according to this section must be filed with the secretary of state in accordance with section 1-01-50.

A political organization that had printed on the ballot at the last preceding presidential election the names of a set of presidential electors pledged to the election of the party's candidates for president and vice president or a candidate for governor and those candidates for presidential electors or governor received at least five percent of the total vote cast for presidential electors or the office of governor within this state at that election are entitled to organize according to the requirements of chapter 16.1-03.

~~Within the consolidated column, the group of candidates for each organization must be inverted from the next group appearing in that column.~~

SECTION 4. AMENDMENT. Section 16.1-12-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-12-02. Certificates of nomination by petition - Form and contents.

Certificates of nomination for nominees for an office to be filled at a general or special election, except for an office appearing on the no-party ballot, may be made as provided by this section. The Except for nominees for president of the United States, names of nominees so nominated must appear on the ballot as independent nominations. The names of nominees for president of the United States may appear on the ballot with a designation, not to exceed five words, that names the organization or political party to which the presidential candidate affiliates. The designation may not falsely indicate an affiliation with or the support of any political party organized in accordance with this title or include any substantive word or phrase that is profane or that is already included in or resembles the name of a political party entitled to a separate column under section 16.1-11-30. Each certificate of nomination by petition must meet the specifications for nominating petitions set forth in section 16.1-11-16. The signatures on the petition must be in the following number:

1. Except as provided in subsection 3, if the nomination is for an office to be filled by the qualified electors of the entire state, there must be no fewer than one thousand signatures.
2. If the nomination is for an office to be filled by the qualified electors of a district less than the entire state, the number of signatures must be at least two percent of the resident population of the district as determined by the most recent federal decennial census, but in no case may more than three hundred signatures be required.
3. If the nomination is for the office of president, there must be no fewer than four thousand signatures.
4. If the petition is for the office of governor or lieutenant governor, it must contain the names and other required information of candidates for both those offices.

⁷⁸ **SECTION 5. AMENDMENT.** Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the central personnel

⁷⁸ Section 28-32-01 was also amended by section 1 of Senate Bill No. 2092, chapter 493, and section 3 of Senate Bill No. 2151, chapter 469.

system as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.

- b. The adjutant general with respect to the division of emergency management.
- c. The council on the arts.
- d. The state auditor.
- e. The department of commerce with respect to the division of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational technology council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, North Dakota municipal bond bank, North Dakota mill and elevator association, and North Dakota farm finance agency.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The state department of health with respect to the state toxicologist.
- s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.

- v. ~~The secretary of state with respect to rules adopted for the presidential preference contest under section 16.1-11-02.3.~~
- w. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

SECTION 6. REPEAL. Sections 16.1-11-02, 16.1-11-02.1, 16.1-11-02.3, 16.1-11-03, and 16.1-11-04 of the North Dakota Century Code are repealed.

Approved April 4, 2003

Filed April 4, 2003

CHAPTER 175

SENATE BILL NO. 2248

(Senators Fischer, Traynor, Trenbeath)
(Representatives Delmore, Devlin, Price)

ABSENTEE AND EARLY VOTING

AN ACT to create and enact three new sections to chapter 16.1-07 of the North Dakota Century Code, relating to providing absentee voting information to military and overseas voters, rejecting absentee ballots cast by military and overseas voters, and creating early voting precincts; and to amend and reenact subsection 2 of section 16.1-07-01 and sections 16.1-07-05, 16.1-07-06, 16.1-07-07, and 16.1-07-08 of the North Dakota Century Code, relating to absentee voting for federal offices by citizens who have never lived in the United States, applications for absent voter's ballots, and absentee voting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 16.1-07-01 of the North Dakota Century Code is amended and reenacted as follows:

2. A qualified elector who is a citizen of the United States and lives outside the United States or a citizen of the United States who is eighteen years of age or older and has never lived in the United States and whose parent is a qualified elector of the state may vote absentee in this state pursuant to this chapter if the individual:
 - a. Does not maintain a domicile;
 - b. Is not registered to vote;
 - c. Is not voting in any other state, territory, or possession of the United States; and
 - d. Possesses a valid passport or card of identity and registration issued under the authority of the secretary of state of the United States.

Such an elector may vote only in federal elections, which means any election held solely or in part for the purpose of electing or nominating any candidate for the office of president, vice president, presidential elector, member of the United States senate, or member of the United States house of representatives.

SECTION 2. AMENDMENT. Section 16.1-07-05 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-05. Time for applying for ballot. At any time in an election year, any qualified elector may apply to the county auditor, the auditor or clerk of the city, or the business manager of the school district, as the case may be, by facsimile or otherwise, for an official ballot to be voted at that election. A voter may obtain an application form for an absent voter's ballot for a general, special, primary, or county

election from either the county auditor or a city auditor. The application form, for a member of the United States armed forces or the United States merchant marine or for a qualified elector living outside the United States, must include a space for the applicant to indicate whether the application is for all statewide elections in the calendar year or only for the election that is immediately after the date of the application. An applicant who is a member of the United States armed forces or the United States merchant marine living outside the United States or is a qualified elector living outside the United States may apply for and vote by facsimile if otherwise qualified to apply for and vote by absentee ballot. An auditor, clerk, or business manager may send and receive facsimile absentee ballot applications and facsimile absentee ballots to any individual eligible to apply for and vote by facsimile under this section. No auditor or clerk may issue ballots for absentee voters on the day of the election except to persons prevented from voting in person on the day of the election due to an emergency. A person requesting an absentee ballot on the day of the election due to an emergency must do so through an agent as set forth in this chapter. An agent may represent only one person. The absentee ballot must be returned to the county auditor's office by four p.m. on the day of the election.

A completed application must be submitted to the appropriate election official in a timely manner so as to allow the applicant to receive, complete, and mail the absent voter's ballot before the day of the election.

SECTION 3. AMENDMENT. Section 16.1-07-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-06. Application form.

1. Application for an absent voter's ballot must be made on a blank 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 ~~or~~, on any blank form, approved by the secretary of state, or any blank containing the following information:
 - a. The applicant's name.
 - b. The applicant's ~~voting~~ 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.

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 that person's own name following the printed name together with the notation "witness to the mark".

2. A qualified elector absent from the state is not required to file an application for an absent voter's ballot for any statewide election if either of the following apply:
 - a. The elector is a member, or spouse or dependent of a member, of the United States armed forces or merchant marine living outside the United States.
 - b. The elector is a United States citizen living outside the United States.

If the qualified elector furnishes the county auditor with a current mailing address and the elector's ~~local residence or precinct~~ residential address, the county auditor either shall mail to the qualified elector a ballot with a return envelope and instructions or send to the qualified elector the ballot and instructions by facsimile for voting for any statewide election in that calendar year.

SECTION 4. AMENDMENT. Section 16.1-07-07 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-07. Delivering application ~~blank form~~ for ballot. The officers specified in section 16.1-07-05, upon request, shall mail an application ~~blank form~~ for an absent voter's ballot to the voter, or they may deliver the application ~~blank form~~ to the voter upon a personal application made at the officer's office. The officers may also make available or distribute the applications, prescribed by the secretary of state, to the public without any specific request being made for the applications.

SECTION 5. AMENDMENT. Section 16.1-07-08 of the North Dakota Century Code is amended and reenacted as follows:

16.1-07-08. Delivering ballots - Envelope accompanying - Statement on envelope - Challenging electors voting by absentee ballot - Inability of elector to sign name.

1. Upon receipt of an application for an official ballot properly filled out and duly signed, or as soon thereafter as the official ballot for the precinct in which the applicant resides has been prepared, the county auditor, city auditor, or business manager of the school district, as the case may be, shall send to the absent voter by mail, at the expense of the political subdivision conducting the election, one official ballot, or personally deliver the ballot to the applicant or the applicant's agent, which agent may not, at that time, be a candidate for any office to be voted upon by the absent voter. The agent shall sign the agent's name before receiving the ballot and deposit with the auditor or business manager of the school district, as the case may be, authorization in writing from the applicant to receive the ballot or according to requirements set forth for signature by mark. The auditor or business manager of the school district, as the case may be, may not provide an absent voter's ballot to a person acting as an agent who cannot provide a signed, written authorization from an applicant. No person may receive compensation, including money, goods, or services, for acting as an agent for an

elector, nor may a person act as an agent for more than four electors in any one election. A voter voting by absentee ballot may not require the political subdivision providing the ballot to bear the expense of the return postage for an absentee ballot.

2. If there is more than one ballot to be voted by an elector of the precinct, one of each kind must be included and an envelope must be enclosed with the ballot or ballots. The front of the envelope must bear the official title and post-office address of the officer supplying the voter with the ballot and upon the other side a printed statement in substantially the following form:

Precinct _____
 Name _____
 Residential Address _____
 City _____ ND Zip Code _____
 Under penalty of possible criminal prosecution for making a false statement, I swear that I reside at the residential address provided above, that I have resided in my precinct for at least thirty days next preceding the election, and this is the only ballot I will cast in this election.
 Applicant's Signature _____
 Date _____

If the absent voter is unable to sign the voter's name, the voter shall mark (X) ~~that~~ on the statement 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 that person's own name following the printed name together with the notation "witness to the mark".

3. The county auditor, city auditor, or business manager of the school district, as the case may be, may challenge the right of anyone to vote an absent voter's ballot whom that officer knows or has reason to believe is not a qualified elector. When challenging a voter who has applied for an absentee voter's ballot, the election official shall follow the procedures and use the affidavit provided for in section 16.1-05-06 and include a voter's affidavit with the outgoing absentee voter's ballot along with an explanation that the voter's right to vote is being challenged and that the voter's affidavit must be completed and returned with the voter's absentee voter's ballot to be accepted.
4. Each person requesting an absent voter's ballot under this chapter must be provided a set of instructions, prescribed by the secretary of state, sufficient to describe the process of voting by absent voter's ballot. The voting instructions must contain a statement informing the individual that the individual is entitled to complete the absent voter's ballot in secrecy.
5. Each individual requesting an absent voter's ballot under this chapter who cannot read the English language or who because of blindness or other disability is unable to mark the voter's ballot, upon request, may receive the assistance of any person of the voter's choice, other than the voter's employer, an officer or agent of the voter's union, a candidate running in that election, or a relative of a candidate as described in subsection 2 of section 16.1-05-02, in marking the voter's ballot.

SECTION 6. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Early voting precinct - Election board appointment - Closing and canvassing.

1. For any primary, general, or special statewide, district, or county election, the board of county commissioners may, before the sixtieth day before the day of the election, create a special precinct, known as an early voting precinct, to facilitate the conduct of early voting in that county according to chapters 16.1-13 and 16.1-15. The election board of the early voting precinct must be known as the early voting precinct election board. The county auditor shall supply the board with all necessary election supplies as provided in chapter 16.1-06.
2. If the board of county commissioners establishes an early voting precinct according to this section, the following provisions apply:
 - a. Early voting must be authorized during the fifteen days immediately before the day of the election. The county auditor shall designate the business days and times during which the early voting election precinct will be open and publish notice of the dates and times in the official county newspaper once each week for three consecutive weeks immediately before the day of the election.
 - b. The county auditor shall appoint the early voting precinct election board that consists of one independent representative to act as the inspector and an equal number of representatives from each political party represented on an election board in the county, as set out in section 16.1-05-01, to act as judges. Each official of the board shall take the oath required by section 16.1-05-02 and must be compensated as provided in section 16.1-05-05.
 - c. The county auditor shall designate a space in a government-controlled facility, accessible to the elderly and the physically disabled as provided in section 16.1-04-02, to locate the early voting precinct.
 - d. At the close of each day of early voting, the inspector, along with a judge from each political party represented on the board shall secure all election related materials, including:
 - (1) The pollbooks and access to any electronically maintained pollbooks.
 - (2) Any stamp and inkpad.
 - (3) The ballot boxes containing voted ballots.
 - (4) Any void, spoiled, and unvoted ballots.
 - e. Ballot boxes containing ballots cast at an early voting precinct may not be opened until the day of the election.
 - f. The early voting precinct may be closed, as provided in chapter 16.1-15, at the end of the last business day designated for early

voting in the county. Results from the early voting precinct may be counted, canvassed, or released under chapter 16.1-15 as soon as any precinct within the county, city, or legislative district closes its polls on the day of the election. The county auditor shall designate a location for the closing, counting, and canvassing process under chapter 16.1-15, which location must be open to any person for the purpose of observing.

- g. The early voting precinct election board shall comply with the requirements of chapters 16.1-05, 16.1-13, and 16.1-15, as applicable.

SECTION 7. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to provide information regarding absentee voting for military and overseas voters. The secretary of state is designated as the official responsible for providing information regarding absentee voting by military and overseas citizens eligible to vote in the state according to section 702 of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 1973ff-1]. The secretary of state shall develop and provide uniform procedures for county auditors to follow when transmitting and receiving applications for absentee ballots to and from military and overseas voters.

SECTION 8. A new section to chapter 16.1-07 of the North Dakota Century Code is created and enacted as follows:

Notification of rejected absentee ballots cast by military and overseas voters. The secretary of state shall establish a uniform procedure for county auditors to follow when notifying a military or overseas voter that the voter's absentee ballot was rejected. The procedure must provide that the notice include the reason why the voter's absentee ballot was rejected as provided by section 707 of the Help America Vote Act of 2002 [Pub. L. 107-252; 116 Stat. 1666; 42 U.S.C. 1973ff-1].

Approved April 24, 2003
Filed April 24, 2003

CHAPTER 176

SENATE BILL NO. 2403

(Senators Stenehjem, O'Connell)
(Representatives Berg, Boucher)

CAMPAIGN CONTRIBUTIONS

AN ACT to create and enact three new sections to chapter 16.1-08.1 of the North Dakota Century Code, relating to campaign contribution statements; and to amend and reenact sections 16.1-08.1-01, 16.1-08.1-02, 16.1-08.1-03, 16.1-08.1-03.1, 16.1-08.1-03.2, 16.1-08.1-03.3, 16.1-08.1-03.5, 16.1-08.1-03.7, 16.1-08.1-03.8, 16.1-08.1-04, 16.1-08.1-05, and 16.1-08.1-06 of the North Dakota Century Code, relating to campaign contributions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷⁹ **SECTION 1. AMENDMENT.** Section 16.1-08.1-01 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Association" means any club, association, union, brotherhood, fraternity, organization, or group of any kind of two or more persons, including labor unions, trade associations, professional associations, or governmental associations, which is united for any purpose, business, or object and which assesses any dues, membership fees, or license fees in any amount, or which maintains a treasury fund in any amount. The term does not include corporations, cooperative corporations, limited liability companies, political committees, or political parties.
2. "Candidate" means an individual who seeks nomination for election or election to public office.
3. "Contribution" means a gift, subscription, loan, advance, or deposit of money, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source ~~except as provided in subdivision d.~~ The term does not include:

⁷⁹ Section 16.1-08.1-01 was also amended by section 1 of Senate Bill No. 2063, chapter 177.

- a. A loan of money from a bank or other lending institution made in the regular course of business.
 - b. Time spent by volunteer campaign or political party workers.
 - c. Money spent by a candidate on the candidate's own behalf.
 - d. ~~Any money received by a candidate for legislative office which is immediately transferred or signed over to a district committee of a political party within thirty days of the candidate receiving the money. The district committee of the political party shall report a transfer of this kind as a contribution according to section 16.1-08.1-03 and shall show the origin of the contribution to the legislative candidate.~~ Money or anything of value received for commercial transactions, including rents, advertising, or sponsorships made as a part of a fair market value bargained-for exchange.
 - e. Contributions of products or services for which the actual cost or fair market value are reimbursed by a payment of money.
4. "Cooperative corporations", "corporations", and "limited liability companies" are as defined in this code, and for purposes of this chapter "corporations" includes nonprofit corporations.
 5. "Expenditure" means a ~~purchase, payment, distribution, loan, advance, deposit, or gift of money or property~~ gift, transfer, conveyance, provision, loan, advance, payment, distribution, disbursement, outlay, or deposit of money or anything of value, except a loan of money from a bank or other lending institution made in the regular course of business, made for the purpose of influencing the nomination for election, or election, of any person to office. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure and includes the transfer of funds by a political committee to another political committee.
 6. "Patron" means a person who owns equity interest in the form of stock, shares, or membership or maintains similar financial rights in a cooperative corporation.
 7. "Person" means an individual, partnership, political committee, association, corporation, cooperative corporation, limited liability company, or other organization or group of persons.
 8. "Political committee" means any committee, club, association, or other group of persons which receives contributions or makes expenditures ~~primarily~~ 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. 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. 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.
9. "Political party" means any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization.
 10. "Political purpose" means any activity undertaken in support of or in opposition to the election or nomination of a candidate to public office whether the activity is undertaken by a candidate, a political committee, a political party, or any person. The term does not include activities undertaken in the performance of a duty of a state office.
 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. AMENDMENT. Section 16.1-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-02. Contributions statement required of candidate committees, candidates, and candidates for legislative office.

1. Any candidate ~~who is~~ committee, as described in section 16.1-08.1-01, or candidate for statewide office who does not have a candidate committee, and any candidate for legislative office soliciting or accepting contributions for any political purpose shall make and file a statement in accordance with this section.
2. The candidate committee, or candidate for statewide office who does not have a candidate committee, and any candidate for legislative office shall include in the statement the name and mailing address of all contributors who contributed in excess of two hundred dollars in the aggregate during the reporting period to the candidate committee, or candidate for statewide office who does not have a candidate committee, and any candidate for legislative office, the amount of each reportable contribution, and the date each reportable contribution was received.
3. The candidate committee, or candidate for statewide office who does not have a candidate committee, and any candidate for legislative office shall file the statement in the office of the secretary of state no later than the twelfth day before the date of the election in which the candidate's name appears on the ballot or in which the candidate seeks election through write-in votes complete from the beginning of that calendar year

through the twentieth day before the date of the election. ~~The~~ Every candidate committee, or candidate for statewide office who does not have a candidate committee, and every candidate for legislative office shall file a complete statement for the entire each calendar year no later than the thirty-first day of January of the following year, regardless of whether the candidate's name appeared on the ballot for any office during that calendar year or whether the candidate did not seek election at any election through write-in votes.

4. Even if the candidate committee, or candidate for statewide office who does not have a candidate committee, or the candidate for legislative office has not received any contributions in excess of two hundred dollars during the reporting period, the candidate committee, or candidate for statewide office who does not have a candidate committee, or the candidate for legislative office shall file a statement as required by this chapter. A statement filed according to this section by a candidate committee or candidate for statewide office who does not have a candidate committee during the reporting period must show the following:
 - a. The gross total of all contributions received in excess of two hundred dollars;
 - b. The gross total of all contributions received 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.
5. A candidate committee, or candidate for statewide office who does not have a candidate committee, and any candidate for legislative office 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.

SECTION 3. AMENDMENT. Section 16.1-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03. Contributions statement required of political parties.

1. Any political party that receives contributions in excess of two hundred dollars in the aggregate during the reporting period shall file a statement containing a detailed list of all contributions received from a person or political committee which exceed two hundred dollars in amount. The statement must include the name and mailing address of all contributors listed, the amount of each reportable contribution, and the date each reportable contribution was received, and for a state political party, a listing that includes the name and mailing address of each recipient of an expenditure exceeding two hundred dollars in the aggregate, the amount of each reportable expenditure, and the date the expenditure was made.
2. A ~~year-end~~ 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. A preelection statement must be filed no

later than the twelfth day before any election at which the party has endorsed or will nominate a candidate and must be complete from the beginning of that calendar year through the twentieth day before the election.

3. Even if the political party has not received any contributions in excess of two hundred dollars during the reporting period, the political party shall file a statement as required by this chapter. A statement filed by a state political party 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 party 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.

SECTION 4. AMENDMENT. Section 16.1-08.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.1. Contributions statement required of persons and measure committees promoting passage or defeat of initiated or referred measure.

1. Any person or measure committee, as described in section 16.1-08.1-01, who is soliciting or accepting a contribution for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly at any election shall file a statement in accordance with this section if the person has received any contributions from a person in excess of one hundred dollars. The statement must include the name and mailing address of all contributors who contributed in excess of one hundred dollars to the person, the amount of each reportable contribution, and the date each reportable contribution was received. The statement must include the name and mailing address of each recipient of an expenditure exceeding one hundred dollars in the aggregate, the amount of each reportable expenditure, and the date the expenditure was made.
2. A person or measure committee who is soliciting or accepting a contribution for the purpose of aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure placed upon a statewide ballot by action of the legislative assembly may not accept a contribution of more than one hundred dollars from a person who does not reside in this state or from an out-of-state political committee unless the contribution is accompanied by a certified statement from the contributor listing the name, address, and amount contributed by each person who contributed more than one hundred

dollars of the contribution. The statement must indicate if no individual person contributed in excess of one hundred dollars of the out-of-state person's or political committee's overall contribution. The certified statement must also list the occupation, employer, and principal place of business for each person who contributed more than one hundred dollars of the contribution. The person soliciting or accepting a contribution for the purpose of aiding the circulation of a statewide initiative or referendum petition or of promoting passage or defeat of a statewide initiated or referred measure must include this statement with the contribution statement required to be filed under subsection 1.

3. The statement required of a person under subsection 1 must be filed with the secretary of state no later than the twelfth day prior to the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day prior to the date of the election. A complete statement for the entire calendar year must be filed no later than the thirty-first day of January of the following year. Even if a person required to report according to this section has not received any contributions in excess of one hundred dollars during the reporting period, the person 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 one hundred dollars;
 - b. The gross total of all contributions received and expenditures made of one hundred dollars, or less; and
 - c. The cash on hand in the filer's account at the start and close of the reporting period.

SECTION 5. 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 political committee, as described in section 16.1-08.1-01, other than a political party and a committee organized in support of a an individual legislative candidate, ~~and a person aiding or opposing a measure to be voted upon by the voters of the state~~ shall register its name, address, and its agent's name and address with the secretary of state each calendar year in which it receives any contribution. The registration must be completed within ~~five~~ fifteen business days of the receipt of any contribution or expenditure made and must be submitted with a registration fee of ~~five~~ 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 6. 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.

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 office or for nomination to political office.
 - d. For any political purpose or the reimbursement or indemnification of any person for money or property so used.
 - e. For the influencing of any measure before the legislative assembly, except in accordance with chapter 54-05.1.
2. 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.
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~~ 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.
- ~~5.~~ 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.

- ~~6.~~ 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.
- ~~7.~~ 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.
- ~~8.~~ 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 7. AMENDMENT. Section 16.1-08.1-03.5 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.5. Expenditures for other purposes - Report required.

1. This chapter does not prohibit the exercise by corporations, cooperative corporations, limited liability companies, and associations of the right to make expenditures and contributions for the purpose of promoting passage or defeat of initiated or referred measures, or for promoting any general political philosophy or belief deemed in the best interest of the employees, stockholders, patrons, or members of the corporation, cooperative corporation, limited liability company, or association other than a "political purpose" as defined by this chapter. Any corporation, cooperative corporation, limited liability company, or association that receives contributions pursuant to section 16.1-08.1-03.1 or spends money for the purpose of promoting passage or defeat of initiated or referred measures, other than a contribution to another person or measure committee promoting passage or defeat of an initiated or referred measure, shall file a statement pursuant to section 16.1-08.1-03.1 along with a statement listing the total amount of money spent for that purpose. The statements filed pursuant to section 16.1-08.1-03.1 must be filed with the secretary of state no later than the twelfth day before the date of the election in which the measure appears or would have appeared on the ballot complete from the beginning of that calendar year through the twentieth day before the date of the election. Statements showing the total amount of money spent for the purpose of promoting passage or defeat of initiated or referred measures must be filed with the secretary of state through the end of the calendar year in which the measure appeared on the ballot.
2. A corporation, cooperative corporation, limited liability company, or association may make a donation of property or money to a state political party or nonprofit entity affiliated with or under the control of a state political party for deposit in a separate and segregated fund. Money in the fund must to be used exclusively by the state political party or nonprofit entity affiliated with or under the control of a state political party for purchasing, maintaining, or renovating a building and for the purchase of fixtures for the building. A state political party or nonprofit

entity affiliated with or under the control of a state political party receiving a donation under this subsection shall file a statement with the secretary of state no later than the thirty-first day of January of each calendar year. The statement must include the name and mailing address of each donor, the amount of each donation, the date each donation was received, all expenditures made from the fund during the previous calendar year, and cash on hand in the fund at the start and close of the reporting period. Any income and financial gain generated from a building purchased, maintained, or renovated from donations authorized under this subsection and not otherwise authorized by law must be deposited in the building fund and must be reported when the political party or nonprofit entity files the statement required under this subsection.

SECTION 8. AMENDMENT. Section 16.1-08.1-03.7 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.7. Political committees that organize and register according to federal law that make disbursements to nonfederal candidates, political parties, and political committees. 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 or to a political party or political committee in this state shall file a copy of that portion of the committee's federal report detailing the disbursement made to the candidate. The political committee shall file a copy of the committee's federal report with the secretary of state at the time of filing the report with the applicable federal agency. The report must include:

1. The name, mailing address, and treasurer of the political committee;
2. The recipient's name and mailing address; and
3. The date and amount of the disbursement made.

SECTION 9. AMENDMENT. Section 16.1-08.1-03.8 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-03.8. Contributions statement required of multicandidate political committees.

1. A multicandidate political committee, as described in section 16.1-08.1-01, that solicits or accepts contributions for any political purpose shall file statements as required by this section.
2. A multicandidate political committee shall file a detailed list showing the name and mailing address of each contributor who contributed in excess of two hundred dollars in the aggregate to the committee during a reporting period, the amount of each reportable contribution in excess of two hundred dollars, and the date each reportable contribution was received.
3. A multicandidate political committee required to file a statement under this section shall file the statement in the office of the secretary of state no later than the twelfth day before the date of any primary, special, or general election. The statement must be complete from the beginning of that calendar year through the twentieth day before the date of the

primary, special, or general election. The political committee shall file a complete statement for the entire calendar year no later than the thirty-first day of January of the following year in which the political committee received a reportable contribution.

4. Even if a multicandidate political committee has not received any contribution in excess of two hundred dollars during the reporting period, the political 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 in excess of two hundred dollars;
 - b. The gross total of all contributions received 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.

5. A multicandidate political 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.

SECTION 10. AMENDMENT. Section 16.1-08.1-04 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-04. Supplemental statement required on large contributions received after original statement - Filing time. ~~If any candidate, political party, or political committee, or person soliciting or accepting contributions for the purpose of aiding the circulation of statewide initiative or referendum petitions or of promoting passage or defeat of a statewide initiated or referred measure,~~ receives any contribution in excess of five hundred dollars in the twenty-day period before any election from any individual contributor, that candidate, political party, political committee, or person shall make and file a supplemental statement in the same form as required by section 16.1-08.1-02, 16.1-08.1-03, 16.1-08.1-03.1, ~~or~~ 16.1-08.1-03.3, or 16.1-08.1-03.8 stating the name and street address of the contributor and the amount of the contribution, and file the statement in the appropriate office within forty-eight hours of the receipt of the contribution.

SECTION 11. 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 - ~~Random and requested~~ Requested audits - Reports.

1. ~~The~~ 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. The secretary of state shall arrange an audit of any statement that the attorney general requests to be audited. The results of the audit must be reported to the attorney general. 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 13 of this Act.

SECTION 12. AMENDMENT. Section 16.1-08.1-06 of the North Dakota Century Code is amended and reenacted as follows:

16.1-08.1-06. Contributions statement requirements.

1. A Except for a statement required to be filed under section 13 of this Act, any other 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 a statement is not received by 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, 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.
2. If the filing date falls on a Saturday or Sunday or a holiday on which the office of the secretary of state is closed, the statement must be filed on the next available day on which the office of the secretary of state is open. In determining the amount of individual contributions from any contributor, all amounts received from the same contributor during the reporting period must be aggregated to report an overall total contribution for the purposes of the statements required by this chapter. Aggregate contributions must reference the date of the most recent contribution. Contributions made separately by different persons from joint accounts are considered separate contributions for reporting purposes.
3. Unless otherwise provided by law, any candidate, political party, committee, or person may not be charged a fee for filing any statement with the secretary of state under this chapter.

SECTION 13. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Contribution statements of other candidates or candidate committees for elected office in the state except as otherwise defined.

1. Except a candidate otherwise defined in section 16.1-01-01, a candidate committee for a judicial district candidate and a candidate for a county or city office, in cities with a resident population of five thousand or more as determined by the last federal decennial census, 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 amount of each reportable contribution; and
 - c. The date each reportable contribution was received.

2. A candidate committee for a judicial district candidate shall file a statement with the secretary of state no later than the thirtieth day 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. Any other candidate required to file a statement under this section shall file the statement in the office of the county auditor in the candidate's county of residence no later than the thirtieth day 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.
3. A statement required by this section to be filed with the appropriate filing officer must be:
 - a. Deemed properly filed when deposited with or delivered to the appropriate filing officer within the prescribed time. A statement that is mailed is deemed properly filed when it is postmarked and directed to the appropriate filing officer within the prescribed time. If the filing officer does not receive a statement, a duplicate of the statement must be promptly filed upon notice by the filing officer of its nonreceipt.
 - b. Preserved by the filing officer 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 filing officer and must be open to public inspection.

SECTION 14. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to charge and collect fees for late filing. Except for a statement required to be filed under section 13 of this Act, any other statement, registration, or report required to be filed according to this chapter, or any amended statement, registration, or report requested by the secretary of state, which is not filed within the prescribed time, the secretary of state shall charge and collect a late fee as follows:

1. Within six days after the prescribed time, twenty-five dollars;
2. Within eleven days after the prescribed time, fifty dollars; and
3. Thereafter, one hundred dollars.

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.

SECTION 15. A new section to chapter 16.1-08.1 of the North Dakota Century Code is created and enacted as follows:

Secretary of state to provide instructions and conduct training. The secretary of state shall provide instructions and conduct training for the purpose of promoting uniform application of campaign finance and disclosure requirements and the uniform filing of statements, registrations, or reports according to this chapter.

Approved April 24, 2003

Filed April 24, 2003

CHAPTER 177

SENATE BILL NO. 2063

(Judiciary Committee)

(At the request of the Secretary of State and Attorney General)

CAMPAIGN CONTRIBUTION DEFINITIONS

AN ACT to amend and reenact subsections 2 and 3 of section 16.1-08.1-01 of the North Dakota Century Code, relating to campaign contributions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸⁰ **SECTION 1. AMENDMENT.** Subsections 2 and 3 of section 16.1-08.1-01 of the North Dakota Century Code are amended and reenacted as follows:

2. "Candidate" means an individual who seeks nomination for election or election to public office, and includes:
 - a. A person holding public office;
 - b. A person who has publicly declared that person's candidacy for nomination for election or election to public office or has filed or accepted a nomination for public office;
 - c. A person who has formed a campaign or other committee for that person's candidacy for public office;
 - d. A person who has circulated a nominating petition to have that person's name placed on the ballot; and
 - e. A person who has, in any manner, solicited or received a contribution for that person's candidacy for public office, whether before or after the election for that office.
3. "Contribution" means a gift, transfer, conveyance, provision, receipt, subscription, loan, advance, or deposit of money, or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to public office or aiding or opposing the circulation or passage of a statewide initiative or referendum petition or measure. The term also means a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any of the above purposes. The term includes funds received by a candidate for public office or a political party or committee which are transferred or signed over to that candidate, party, or committee from another candidate, party, or political committee or other source except as provided in subdivision d. The term "anything of value" includes any good or service of more than a nominal value. The

⁸⁰ Section 16.1-08.1-01 was also amended by section 1 of Senate Bill No. 2403, chapter 176.

term "nominal value" means the cost, price, or worth of the good or service is trivial, token, or of no appreciable value. The term "contribution" does not include:

- a. A loan of money from a bank or other lending institution made in the regular course of business.
- b. Time spent by volunteer campaign or political party workers.
- c. Money spent by a candidate on the candidate's own behalf.
- d. Any money received by a candidate for legislative office which is immediately transferred or signed over to a district committee of a political party within thirty days of the candidate receiving the money. The district committee of the political party shall report a transfer of this kind as a contribution according to section 16.1-08.1-03 and shall show the origin of the contribution to the legislative candidate.
- e. Money or anything of value received by a candidate in that person's personal capacity, including pursuant to a contract or agreement made for personal or private employment purposes, and not received for a political purpose or to influence the performance of that person's official duty.

Approved March 21, 2003

Filed March 21, 2003

CHAPTER 178

SENATE BILL NO. 2405

(Senators Dever, Krebsbach)
(Representatives Devlin, Meier)

VACANCIES IN NOMINATIONS AND LEGISLATIVE OFFICE

AN ACT to amend and reenact sections 16.1-11-18 and 16.1-13-10 of the North Dakota Century Code, relating to filling vacancies occurring in nominations for party office and filling legislative vacancies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 16.1-11-18 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-18. Party committees to fill vacancy occurring in nomination for party office.

1. If a vacancy occurs in any party certificate of endorsement at the primary election for any state or legislative district office, the proper state or district executive committee of the political party may fill the vacancy by filing another certificate of endorsement with the proper officer as provided in sections 16.1-11-06 and 16.1-11-11.
2. If no party endorsement has been made by certificate and a vacancy occurs in a slate of candidates seeking party nomination by petition at the primary election, the proper state or district executive committee may fill the vacancy by filing a certificate of endorsement with the proper officer as provided in sections 16.1-11-06 and 16.1-11-11.
3. If party endorsements by certificate have been made for any state or district office and a vacancy occurs in the slate of persons seeking nomination at the primary election because of the unavailability of the person who is seeking nomination by petition, that vacancy may not be filled except by petition.
4. If a vacancy occurs in a slate of statewide candidates after the candidates have been nominated at the primary election, the proper state executive committee may fill any vacancy by filing a certificate of nomination with the secretary of state. The chairman and secretary of the committee shall make and file with the secretary of state a certificate setting forth the cause of the vacancy, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and any further information as may be required to be given in an original certificate of nomination. When such a certificate is filed, the secretary of state shall certify the new nomination and the name of the person who has been nominated to fill the vacancy in place of the original nominee to the various auditors. If the secretary of state already has forwarded the certificate, the secretary of state forthwith shall certify to the auditors the name and address of

the new nominee, the office the new nominee is nominated for, the party or political principle the new nominee represents, and the name of the person for whom the new nominee is substituting. Failure to publish the name of a new nominee does not invalidate the election.

5. If a vacancy occurs in a slate of legislative candidates after the candidates have been nominated at the primary election, the proper district executive committee may fill the vacancy by filing a certificate of nomination with the county auditor of the new nominee's county of residence. The chairman and secretary of the committee shall make and file with the county auditor of the new nominee's county of residence a certificate setting forth the cause of the vacancy, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies, and any further information as may be required to be given in an original certificate of nomination. When the certificate is filed, the county auditor of the new nominee's county of residence shall certify the new nomination to the various auditors affected by the change and to the secretary of state by forwarding to them the name of the person who has been nominated to fill the vacancy in place of the original nominee. The certification must include the name and address of the new nominee, the office the new nominee is nominated for, the party or political principle the new nominee represents, and the name of the person for whom the new nominee is substituting. Failure to publish the name of a new nominee does not invalidate the election.
6. A vacancy in a nomination following a primary election may not be filled according to subsections 4 or 5 unless the nominated candidate:
 - a. Dies;
 - b. Would be unable to serve, if elected, as a result of a debilitating illness;
 - c. Ceases to be a resident of the state or an individual nominated for legislative office will not be a resident of the legislative district at the time of the election; or
 - d. Ceases to be qualified to serve, if elected, as otherwise provided by law.

Vacancies to be filled according to the provisions of this section may be filled not later than sixty days prior to the election.

SECTION 2. AMENDMENT. Section 16.1-13-10 of the North Dakota Century Code is amended and reenacted as follows:

16.1-13-10. Vacancy existing in office of member of legislative assembly.

1. If a vacancy in the office of a member of the legislative assembly occurs, the county auditor of the county in which the former member resides or resided shall notify the chairman of the legislative council of the vacancy. The county auditor need not notify the chairman of the legislative council of the resignation of a member of the legislative assembly when the resignation was made under section 44-02-02.

Upon receiving notification of a vacancy, the chairman of the legislative council shall notify the district committee of the political party that the former member represented in the district in which the vacancy exists. The district committee shall hold a meeting within twenty-one days after receiving the notification and select an individual to fill the vacancy. If the former member was elected as an independent candidate or if the district committee does not make an appointment within twenty-one days after receiving the notice from the chairman of the legislative council, the chairman of the legislative council shall appoint a resident of the district to fill the vacancy. # Except as provided in subsection 2, if eight hundred twenty-eight days or more remain until the expiration of the term of office for that office, the individual appointed to fill the vacancy shall serve until a successor is elected at and qualified following the next general election or special election called by the governor according to subsection 2 to serve for the remainder of the term of office for that office.

2. The qualified electors of a legislative district in which a vacancy in the legislative assembly occurs may petition for a special election to be called by the governor to fill the vacancy. The petition must include the signatures of qualified electors equal in number to four percent of the resident population of the legislative district as determined by the last federal decennial census and must be presented to the secretary of state within thirty days following an appointment being made according to subsection 1. If the secretary of state determines the petition contains the required number of signatures of qualified electors of the affected legislative district, the secretary of state shall notify the governor that a special election is required to be called to fill the vacancy. Upon receiving such notice, the governor shall issue a writ of election directed to the county auditor of each affected county commanding the county auditor to hold a special election to fill the vacancy at a time designated by the governor. A special election under this section must conform to the applicable election deadlines found in this title and may be called to coincide with a regularly scheduled primary or general election provided the special election is called by the fifteenth day before the deadline for candidates to file for office before a regularly scheduled primary or general election. A special election under this section may not be scheduled to occur during the time from a general election through eighty days following the adjournment of the next ensuing regular session of the legislative assembly.
3. The secretary of state must be notified of an appointment made by a district committee or the chairman of the legislative council according to this section. Upon notification, the secretary of state shall issue the appointee a certificate of appointment and an oath of office for the appointee to complete and file with the secretary of state.

FIRES

CHAPTER 179

SENATE BILL NO. 2266

(Senator Christenson)
(Representatives Ekstrom, Potter)

FIREFIGHTERS RELIEF ASSOCIATION PENSIONS

AN ACT to amend and reenact subsection 1 of section 18-05-06 of the North Dakota Century Code, relating to firefighters relief association pensions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 18-05-06 of the North Dakota Century Code is amended and reenacted as follows:

1. A firefighters relief association organized under the laws of this state may pay out of any funds received from the state, city, municipality, or any other source a service pension in an amount ~~not exceeding two hundred dollars per month~~, as may be provided by the association's bylaws; to each of its members who has retired and who:
 - a. Has reached the age of fifty years;
 - b. Has done active duty for twenty years or more as a member of a fire department in the municipality or rural fire protection district in which the association exists;
 - c. Has been a member of the firefighters relief association for at least ten years before the date of retirement; and
 - d. Complies with any additional conditions as to age, service, and membership that may be prescribed by the bylaws of the association.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 180

SENATE BILL NO. 2243

(Senators O'Connell, Klein, Stenehjem)
(Representatives Bellew, Hunskor, Maragos)

FIRE PROTECTION DISTRICT BOARDS

AN ACT to amend and reenact subsection 1 of section 18-10-04 of the North Dakota Century Code, relating to the board of directors of a rural fire protection district.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 18-10-04 of the North Dakota Century Code is amended and reenacted as follows:

1. At the time and place fixed by the county auditor for the public meeting as provided in section 18-10-03, the electors who are owners of any interest in real or personal property assessed for taxation in the district and who are residing within the boundaries of the district ~~shall have the opportunity to~~ may decide by majority vote of those present whether the organization of the district ~~shall~~ may be completed. Permanent organization must be effected by the election of a board of directors consisting of not less than five residents of the district, at least one of whom must ~~reside in and~~ represent each township by having an interest in real or personal property assessed for taxation in the township the director is representing, if the district includes more than one township. If the district is composed of more than seven townships, the board may elect to have only seven members, but no more than ~~one member~~ two members may be from any township.

Approved March 12, 2003
Filed March 12, 2003

FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 181

HOUSE BILL NO. 1353

(Representatives Carlisle, Meier, Thoreson)
(Senators Dever, Klein, Robinson)

METHAMPHETAMINE PRECURSOR DRUG SALE REGULATION

AN ACT to create and enact three new subsections to section 19-03.1-01 and two new sections to chapter 19-03.4 of the North Dakota Century Code, relating to the definitions, prima facie proof of intent, and the retail or over-the-counter sale of methamphetamine precursor drugs; to amend and reenact section 19-03.1-01 and subsection 13 of section 19-03.4-01 of the North Dakota Century Code, relating to definitions used in the Uniform Controlled Substance Act and the definition of drug paraphernalia; to provide a penalty; 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:
- a. 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
 - b. 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. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- a. Opium and opiate and any salt, compound, derivative, or preparation of opium or opiate.
 - b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.
 - c. Opium poppy and poppy straw.
 - d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

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.
20. "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds.
21. "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.
22. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
23. "Practitioner" means:
 - a. 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.
 - b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.
24. "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.
25. "State" when applied to a part of the United States includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.
26. "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. Three new subsections to section 19-03.1-01 of the North Dakota Century Code are created and enacted as follows:

"Methamphetamine precursor drug" means a drug or product containing ephedrine, pseudoephedrine, or any of their salts, optical isomers, or salts of optical isomers;

"Over-the-counter sale" means a retail sale of a drug or product other than a controlled, or imitation controlled, substance;

"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;

SECTION 3. AMENDMENT. Subsection 13 of section 19-03.4-01 of the North Dakota Century Code is amended and reenacted as follows:

13. Ingredients or components to be used or intended or designed to be used in manufacturing, producing, processing, preparing, testing, or analyzing a controlled substance, whether or not otherwise lawfully obtained, including anhydrous ammonia, nonprescription medications, methamphetamine precursor drugs, or lawfully dispensed controlled substances.

SECTION 4. A new section to chapter 19-03.4 of the North Dakota Century Code is created and enacted as follows:

Prima facie proof of intent. Possession of more than twenty-four grams of a methamphetamine precursor drug or combination of methamphetamine precursor drugs calculated in terms of ephedrine HCl and pseudoephedrine HCl is prima facie evidence of intent to violate sections 19-03.4-03 and 19-03.4-04. This subsection does not apply to a practitioner as defined in subsection 23 of section 19-03.1-01 or to a product possessed in the course of a legitimate and lawful business.

SECTION 5. A new section to chapter 19-03.4 of the North Dakota Century Code is created and enacted as follows:

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 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 2003

Filed April 7, 2003

CHAPTER 182**HOUSE BILL NO. 1146**

(Judiciary Committee)

(At the request of the Board of Pharmacy)

CONTROLLED SUBSTANCE SCHEDULE

AN ACT to amend and reenact subsection 4 of section 19-03.1-09 and subsection 4 of section 19-03.1-11 of the North Dakota Century Code, relating to controlled substances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 19-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

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.

- e. 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.
- f. g. Gamma-hydroxybutyric acid in a United States food and drug administration-approved drug product.
- g. h. Glutethimide.
- h. i. Ketamine.
- i. j. Lysergic acid.
- j. k. Lysergic acid amide.
- k. l. Methyprylon.
- l. m. Sulfondiethylmethane.
- m. n. Sulfonethylmethane.
- n. o. Sulfonmethane.
- o. p. 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, flupyrazapon.

SECTION 2. AMENDMENT. Subsection 4 of section 19-03.1-11 of the North Dakota Century Code is 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. Barbital.
 - 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.
- ~~q~~ r. Ethchlorvynol.
- ~~r~~ s. Ethinamate.
- ~~s~~ t. Ethyl loflazepate.
- ~~t~~ u. Fludiazepam.
- ~~u~~ v. Flurazepam.
- ~~v~~ w. Halazepam.
- ~~w~~ x. Haloxazolam.
- ~~x~~ y. Ketazolam.
- ~~y~~ z. Loprazolam.
- ~~z~~ aa. Lorazepam.
- ~~aa~~ bb. Lormetazepam.
- ~~bb~~ cc. Mebutamate.
- ~~cc~~ dd. Medazepam.
- ~~dd~~ ee. Meprobamate.
- ~~ee~~ ff. Methohexital.
- ~~ff~~ gg. Methylphenobarbital (also known as mephobarbital).
- ~~gg~~ hh. Midazolam.
- ~~hh~~ ii. Nimetazepam.
- ~~ii~~ jj. Nitrazepam.

jj	<u>kk</u>	Nordiazepam.
kk	<u>ll</u>	Oxazepam.
ll	<u>mm</u>	Oxazolam.
mm	<u>nn</u>	Paraldehyde.
nn	<u>oo</u>	Petrichloral.
oo	<u>pp</u>	Phenobarbital.
pp	<u>qq</u>	Pinazepam.
qq	<u>rr</u>	Prazepam.
rr	<u>ss</u>	Quazepam.
ss	<u>tt</u>	Sibutramine.
tt	<u>uu</u>	Temazepam.
uu	<u>vv</u>	Tetrazepam.
vv	<u>ww</u>	Triazolam.
ww	<u>xx</u>	Zaleplon.
xx	<u>yy</u>	Zolpidem.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 183**HOUSE BILL NO. 1351**

(Representatives Delmore, Dosch, Hawken)
(Senators Cook, Flakoll, Holmberg)

**CONTROLLED SUBSTANCE EXPOSURE OF
CHILDREN AND VULNERABLE ADULTS**

AN ACT to create and enact section 19-03.1-22.2 of the North Dakota Century Code, relating to exposure of children or vulnerable adults to controlled substances; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 19-03.1-22.2 of the North Dakota Century Code is created and enacted as follows:

19-03.1-22.2. Endangerment of child or vulnerable adult.

1. For purposes of this section:
 - a. "Chemical substance" means a substance intended to be used as a precursor in the manufacture of a controlled substance or any other chemical intended to be used in the manufacture of a controlled substance. Intent under this subsection may be demonstrated by the substance's use, quantity, manner of storage, or proximity to other precursors or to manufacturing equipment.
 - b. "Child" means an individual who is under the age of eighteen years.
 - c. "Controlled substance" means the same as that term is defined in section 19-03.1-01, except the term does not include less than one-half ounce of marijuana.
 - d. "Drug paraphernalia" means the same as that term is defined in section 19-03.4-01.
 - e. "Prescription" means the same as that term is described in section 19-03.1-22.
 - f. "Vulnerable adult" means either a disabled adult or vulnerable elderly adult as those terms are defined in section 12.1-31-07.
2. Unless a greater penalty is otherwise provided by law, a person who knowingly or intentionally causes or permits a child or vulnerable adult to be exposed to, to ingest or inhale, or to have contact with a controlled substance, chemical substance, or drug paraphernalia as defined in subsection 1, is guilty of a class C felony.
3. Unless a greater penalty is otherwise provided by law, a person who violates subsection 2, and a child or vulnerable adult actually suffers

bodily injury by exposure to, ingestion of, inhalation of, or contact with a controlled substance, chemical substance, or drug paraphernalia, is guilty of a class B felony unless the exposure, ingestion, inhalation, or contact results in the death of the child or vulnerable adult, in which case the person is guilty of a class A felony.

4. It is an affirmative defense to a violation of this section that the controlled substance was provided by lawful prescription for the child or vulnerable adult and that it was administered to the child or vulnerable adult in accordance with the prescription instructions provided with the controlled substance.

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

Approved April 9, 2003

Filed April 9, 2003

CHAPTER 184**HOUSE BILL NO. 1111**

(Judiciary Committee)

(At the request of the Attorney General)

**DRUG PARAPHERNALIA REPORTING AND
FORFEITURE**

AN ACT to amend and reenact subsection 3 of section 12-60-16.4 and subdivision g of subsection 1 and subdivision e of subsection 5 of section 19-03.1-36 of the North Dakota Century Code, relating to drug paraphernalia offense reporting and forfeiture and use of forfeited property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 12-60-16.4 of the North Dakota Century Code is amended and reenacted as follows:

3. Class A and B misdemeanor offenses in chapters 19-03.1 ~~and~~, 19-03.2, and 19-03.4 and in sections 12-47-21 and 20.1-01-18.

⁸¹ **SECTION 2. AMENDMENT.** Subdivision g of subsection 1 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- g. All drug paraphernalia as defined in ~~title 12-1~~ chapter 19-03.4.

⁸² **SECTION 3. AMENDMENT.** Subdivision e of subsection 5 of section 19-03.1-36 of the North Dakota Century Code is amended and reenacted as follows:

- e. Use the property, including controlled substances, imitation controlled substances, and plants forfeited under subsections 6 and 7, in enforcement of this chapter. However, in a case involving the delivery of a forfeited controlled substance by a law enforcement officer or a person acting as an agent of a law enforcement officer, no prosecution or conviction for simple possession of a controlled substance under subsection ~~3~~ 6 of section 19-03.1-23 may be based upon the forfeited controlled substances supplied by the law enforcement officer or the officer's agent.

Approved March 13, 2003

Filed March 13, 2003

⁸¹ Section 19-03.1-36 was also amended by section 3 of House Bill No. 1111, chapter 184, and section 11 of Senate Bill No. 2046, chapter 48.

⁸² Section 19-03.1-36 was also amended by section 2 of House Bill No. 1111, chapter 184, and section 11 of Senate Bill No. 2046, chapter 48.

CHAPTER 185

HOUSE BILL NO. 1128

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

LIVESTOCK MEDICINE REGULATION

AN ACT to amend and reenact sections 19-14-01, 19-14-02, 19-14-03, 19-14-04, 19-14-05, 19-14-06, 19-14-07, and 19-14-08 of the North Dakota Century Code, relating to the regulation of livestock medicines; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-14-01 of the North Dakota Century Code is amended and reenacted as follows:

19-14-01. Livestock medicine defined Definitions. ~~The term~~ As used in this chapter:

1. "Commissioner" means the agriculture commissioner.
2. "livestock Livestock medicine" as used in this chapter includes all devices, remedies, cures, tonics, powders, proprietary medicines, ~~medicated stock feeds~~ type A medicated articles, and similar preparations for the treatment or prevention of any disease of livestock, poultry, or other domestic animals which are administered internally for their stimulating, invigorating, curative, or other than nutritive powers, and also all powders, sprays, dips, and other preparations for external use in the curing of scab or the eradication of ticks, lice, and other mites and parasites on livestock, poultry, or other domestic animals. The term does not include medicines which are manufactured, sold, or recommended primarily for human use.
3. "Type A medicated article" includes a product with standardized potency containing one or more new animal drugs intended for use in the manufacture of another medicated article or a medicated feed.

SECTION 2. AMENDMENT. Section 19-14-02 of the North Dakota Century Code is amended and reenacted as follows:

19-14-02. Registration of livestock medicine. The commissioner of ~~agriculture~~, upon the application of the manufacturer or distributor of livestock medicine and the payment of the registration fee prescribed in section 19-14-04, shall register any livestock medicine that does not violate this chapter. Registration covers a two-year period beginning July first and ending June thirtieth of ~~the second~~ ensuing every even numbered year unless it is canceled sooner because a change is made in the ingredients or formula of manufacture or in the name, brand, or trademark under which the medicine is sold. In the event of any change, the medicine must be registered anew in the same manner as upon an original application.

SECTION 3. AMENDMENT. Section 19-14-03 of the North Dakota Century Code is amended and reenacted as follows:

19-14-03. Regulations for sale. No person may sell, offer, or expose for sale, have in possession with intent to sell, any livestock medicine:

1. Which is sold under a name, brand, trademark, or labeling which is misleading, deceptive, or false, or which is dangerous to animals under the conditions of use prescribed in the labeling or advertising thereof.
2. Which purports to cure any infectious disease of domestic animals for which no genuine cure is known.
3. Which has not been registered by the commissioner of agriculture for sale in this state. The certificate of registration must include a disclosure of the name and quantity or proportion of each active ingredient and the names of the inert ingredients or fillers.
4. Which does not have printed or written upon the label of each package sold at retail, in type not less than one-fourth the size of the largest type on the package:
 - a. The common name in English of all active ingredients in the order of their predominance in the product;
 - b. A statement of the actual percentage or relative amounts of each ingredient active and inert. In the case of certain products (such as coated medicinal tablets), it may be impractical to state the quantity or proportion of inert ingredients and exemptions must be established by rules adopted by the commissioner;
 - c. The net contents, by weight, measure, or numerical count of the package;
 - d. The name and principal address of the manufacturer or person responsible for placing the livestock medicine on the market; and
 - e. Complete and explicit directions for use of the medicine.
5. When the contents of the package as originally ~~put up~~ manufactured have been removed in whole or in part, and other contents have been placed in such package.

⁸³ **SECTION 4. AMENDMENT.** Section 19-14-04 of the North Dakota Century Code is amended and reenacted as follows:

19-14-04. Registration fee. Prior to each two-year registration ending June thirtieth of every even numbered year, a registration fee of twenty dollars must be paid to the commissioner of agriculture for each livestock medicine that is registered. A person submitting an application for registration which is received by the

⁸³ Section 19-14-04 was also amended by section 11 of Senate Bill No. 2009, chapter 30.

commissioner after July thirty-first of that year shall pay an additional late registration fee of ten dollars.

SECTION 5. AMENDMENT. Section 19-14-05 of the North Dakota Century Code is amended and reenacted as follows:

19-14-05. Commissioner may cancel registration. The commissioner of ~~agriculture~~ may cancel the registration of any livestock medicine that is sold subsequent to its registration in violation of this chapter. The commissioner of ~~agriculture~~ may cancel the registration whenever a change is made in the ingredients or formula of the manufacture or in the name, brand, or trademark under which the medicine is sold, unless the medicine has been reregistered.

SECTION 6. AMENDMENT. Section 19-14-06 of the North Dakota Century Code is amended and reenacted as follows:

19-14-06. Commissioner may adopt rules, take testimony, grant public hearings. The commissioner of ~~agriculture~~ may adopt rules pursuant to chapter 28-32 governing applications for registration, the submission of samples for analysis, and all other matters necessary to give effect to this chapter. The commissioner of ~~agriculture~~ may take expert and other testimony whenever the commissioner deems testimony advisable and, upon request, shall grant a public hearing prior to the cancellation of a registration and also to any manufacturer or distributor whose request for registration of any livestock medicine has been denied.

SECTION 7. AMENDMENT. Section 19-14-07 of the North Dakota Century Code is amended and reenacted as follows:

19-14-07. Enforcement of chapter. The commissioner of ~~agriculture~~ shall enforce this chapter by inspection, chemical analysis, and any other appropriate method. All samples for analysis must be taken from stocks held within, or intended for sale in, this state. The commissioner of ~~agriculture~~ may ~~call upon~~ require any manufacturer or distributor applying for registration of a livestock medicine to supply samples of the medicine for analysis. The commissioner may institute such action at law or in equity as may appear necessary to enforce compliance with the provisions of this chapter, and in addition to any other remedy, may apply to the district court for relief by injunction, mandamus, or any other appropriate remedy in equity. In such actions, the commissioner is not required to give or post bond in any action to which the commissioner is a party whether upon appeal or otherwise.

SECTION 8. AMENDMENT. Section 19-14-08 of the North Dakota Century Code is amended and reenacted as follows:

19-14-08. Penalty - Criminal - Civil. Any person who ~~sells, offers, or exposes for sale, or has in possession with intent to sell, any livestock medicine in violation of~~ violates any of the provisions of this chapter or any rule adopted pursuant to this chapter, or who willfully and falsely represents that any livestock medicine is registered for sale in this state when in fact it is not so registered, is guilty of a class B misdemeanor. In addition to the criminal penalty provided in this section, a person who violates a provision of this chapter or a rule adopted pursuant to this chapter is subject to a civil penalty not to exceed five hundred dollars per violation. Each day of noncompliance constitutes a separate violation for purposes of penalty assessments. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an administrative hearing pursuant to chapter 28-32.

Approved March 18, 2003

Filed March 19, 2003

CHAPTER 186

HOUSE BILL NO. 1158

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

PESTICIDE REGISTRATIONS

AN ACT to amend and reenact section 4-28-03, subsections 18, 19, and 28 of section 19-18-02, and sections 19-18-04, 19-18-04.1, and 19-18-07 of the North Dakota Century Code, relating to pesticide registrations; to repeal section 19-18-02.2 of the North Dakota Century Code, relating to wheat commission membership and a pesticide residue advisory board; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-28-03 of the North Dakota Century Code is amended and reenacted as follows:

4-28-03. Wheat commission - Members. There is hereby created the North Dakota state wheat commission which consists of seven members. One member must be appointed or elected from each of the districts of the state established by the provisions of this chapter and one member must be appointed or elected from the state at large. Each member, except the member from the state at large, must be a bona fide resident of and a qualified elector in the district the member represents, must have farming operations in such district, and must have been actually engaged in the production of wheat and have derived a substantial portion of the member's income therefrom for at least five years next preceding the member's appointment or election. The member from the state at large must have similar qualifications except as limited by district lines.

Not more than sixty days prior to expiration of the term of the member from the state at large, a nominating committee consisting of the agriculture commissioner, the president of the North Dakota crop improvement association, the director of the North Dakota agricultural experiment station, the director of the North Dakota state university extension service, the president of the North Dakota farm bureau, the president of the North Dakota farmers union, ~~and~~ the president of the North Dakota grain dealers association, the president of the North Dakota grain growers association, and an individual who is a resident of this state and a member of the United States durum growers association, or their duly authorized representatives, shall submit to the governor a list of three names and within sixty days after expiration of the term the governor shall appoint, from the nominees so named, the member at large to the commission.

Each member of the commission shall hold office for a term of four years and until the member's successor has been selected and has qualified except that the commissioners elected and serving from the first and fourth districts shall hold office for terms ending on June 30, 1984; the commissioners elected and serving from the second and fifth districts shall hold office for terms ending on June 30, 1985; and the commissioners elected and serving from the third and sixth districts shall hold office for terms ending on June 30, 1982; and the commissioner appointed and serving as the state at large member shall hold office for a term ending on June 30, 1983. No producer is entitled to serve more than three terms.

At least sixty days prior to the expiration of the term of office of a commissioner representing any district, a meeting of producers must be held in each county in the district for the purpose of electing a county representative. The county agent shall call such meeting by publishing notice in the official newspaper of the county for two successive weeks, the last publication to be not less than five nor more than ten days prior to the meeting. The meeting must be held at a central location within the county and must be called to order by the county agent. The county agent, in cooperation with the cooperative extension service, shall conduct all elections under this section in each county in the manner the county agent deems fair and reasonable. Votes must be canvassed by the county agent and certified by the county agent with the name and post-office address of the elected county representative to the director of the North Dakota state university extension service who shall thereupon, as expeditiously as possible, call a meeting of the county representatives of the district. Notice of such meeting must be sent to each county representative by registered or certified mail not less than five days prior to the meeting which must be held at a central location within the district. At such district meeting, the county representatives shall elect one of their number as the district member of the commission. The ballots at such meeting must be canvassed by the North Dakota state university extension service and the result of election certified to the governor by the director. Additional meetings of county representatives may be called by the state wheat commission for the purpose of promoting its programs. All expenses of all such meetings and elections must be paid from commission funds. County representatives must be reimbursed for expenses necessarily incurred in attending meetings and performing other official duties on the same basis as other state officers. Any vacancy occurring on the commission other than by expiration of term of office must be filled by the county representatives who shall elect one of their number as the district member of the commission for the remainder of the unexpired term. If the vacancy is from the state at large, appointment must be made from three nominations submitted by the nominating committee as in the case of the original appointment.

SECTION 2. AMENDMENT. Subsections 18, 19, and 28 of section 19-18-02 of the North Dakota Century Code are amended and reenacted as follows:

18. "Labeling" means all labels and other written, printed, or graphic matter:
 - a. Upon the pesticide or device or any of its containers or wrappers;
 - b. Accompanying the pesticide or device at any time; or
 - c. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, ~~nonmisleading~~ non-misleading reference is made to current official publications of ~~the environmental protection agency, the United States department of agriculture or interior, state agricultural experiment stations or centers, state agricultural colleges, or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the fields of pesticides~~ a state or federal agency, state agricultural experiment station, or state agricultural college.

19. "Misbranded" applies:
 - a. To any pesticide or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular; and

b. To any pesticide:

- (1) If it is an imitation of or is offered for sale under the name of another pesticide;
- (2) If its labeling bears any reference to registration under this chapter;
- (3) If the labeling accompanying it does not contain directions for use which are necessary and, if complied with, adequate to protect health and the environment;
- (4) If the label does not contain a warning or caution statement which may be necessary and, if complied with, adequate to protect health and the environment;
- (5) If the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package that is presented or displayed under customary conditions of purchase; except that a pesticide is not misbranded under this subsection if:
 - (a) The size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part that is presented or displayed under customary conditions of purchase; and
 - (b) The ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the commissioner;
- (6) The labeling does not contain a statement of the use classification under which the product is registered if the product is a restricted use pesticide;
- (7) There is not affixed to its container, and to the outside container or wrapper of the retail package, if there is one, through which the required information on the immediate container cannot be clearly read, a label bearing:
 - (a) The name and address of the producer, registrant, or person for whom produced;
 - (b) The name, brand, or trademark under which the pesticide is sold; and
 - (c) The net weight or measure of the content; and
 - (d) ~~When required by regulation of the commissioner to effectuate the purposes of this chapter, the registration number assigned to the pesticide under this chapter, and the use classification;~~

- (8) The pesticide contains any substance or substances in quantities highly toxic to man, unless the label bears, in addition to any other matter required by this chapter:
 - (a) The skull and crossbones;
 - (b) The word "poison" prominently in red on a background of distinctly contrasting color; and
 - (c) A statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide;
- (9) If any word, statement, or other information required by or under the authority of this chapter to appear on the labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (10) If in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living man or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying the pesticide; or
- (11) If a plant regulator, defoliant, or desiccant when used as directed is injurious to man or other vertebrate animals, or the vegetation to which it is applied; provided, that the physical or physiological effect on plants or parts thereof may not be deemed injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with label claims and recommendations.

28. "Restricted use pesticides" means any pesticide ~~that the commissioner has found and determined under the provisions of this chapter to be injurious to persons, beneficial insects, animals, crops, or to the environment other than the pests the pesticide is intended to repel, destroy, control, or mitigate~~ formulation that 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 commissioner pursuant to section 19-18-05.

⁸⁴ **SECTION 3. AMENDMENT.** Section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

⁸⁴ Section 19-18-04 was also amended by section 1 of Senate Bill No. 2319, chapter 187.

19-18-04. (Effective through June 30, 2003) 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 registered.
 - c. Be accompanied by a current label of each product so registered.
 - d. Be accompanied by a registration fee of three hundred fifty dollars for each product 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.
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. If after public hearing before the commissioner the application is denied, the product may not be offered for sale.
3. Each registration covers a two-year period beginning January first 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, or from one place to another place or location. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date, or within the same month the pesticides are first manufactured or sold within this state. 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, 2003) 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~~ 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. ~~If after public hearing before the commissioner the application is denied, the product may not be offered for sale.~~

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, ~~or from one place to another place or location~~. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date, ~~or within the same month the pesticides are first manufactured or sold within this state~~. 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.

SECTION 4. AMENDMENT. Section 19-18-04.1 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04.1. Reporting requirements. Upon request of the commissioner, a registrant shall report the amount and type of each registered pesticide sold, offered for sale, or otherwise distributed in the state. The report must be filed ~~by March first~~ within thirty days after receiving the commissioner's request. The information required must include the brand name, amount, and formulation of each pesticide sold, offered for sale, or otherwise distributed in the state. However, specific brand names may not be identified in any report or otherwise made public.

SECTION 5. AMENDMENT. Section 19-18-07 of the North Dakota Century Code is amended and reenacted as follows:

19-18-07. Exemptions. The penalties provided for violations of section 19-18-03 do not apply to:

1. Any carrier while lawfully engaged in transporting a pesticide within this state, if the carrier, upon request, permits the commissioner to copy all records showing the transactions in and movement of the articles.

2. Public officials of this state and the federal government engaged in the performance of their official duties.
3. The manufacturer or shipper of a pesticide for experimental use only:
 - a. By or under the supervision of an agency of this state or of the federal government authorized by law to conduct research in the field of pesticides; or
 - b. By others if the pesticide is not sold and if the container thereof is plainly and conspicuously marked "For experimental use only - not to be sold", together with the manufacturer's name and address. ~~If a written permit has been obtained from the commissioner, pesticides may be sold for experimental purposes subject to such restrictions and conditions as may be set forth in the permit.~~
4. A person using, distributing, selling, or offering for sale an unregistered pesticide for which the United States environmental protection agency has granted an emergency exemption for at least one use in North Dakota under section 18 of the federal Act.

No article may be deemed in violation of this chapter when intended solely for export to a foreign country and when prepared or packed according to the specifications or directions of the purchaser. If not so exported, all the provisions of this chapter apply.

SECTION 6. REPEAL. Section 19-18-02.2 of the North Dakota Century Code is repealed.

SECTION 7. EMERGENCY. Sections 1 and 4 of this Act are declared to be an emergency measure.

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 187

SENATE BILL NO. 2319

(Senators Nichols, Christmann, Lyson)
(Representatives Onstad, Rennerfeldt, Warner)

PESTICIDE REGISTRATION FEES

AN ACT to amend and reenact section 19-18-04 of the North Dakota Century Code, relating to pesticide registration fees; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸⁵ **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, ~~2003~~ 2005) 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 registered.
 - c. Be accompanied by a current label of each product so registered.
 - d. Be accompanied by a registration fee of three hundred fifty dollars for each product 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.
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. If after public hearing before the commissioner the application is denied, the product may not be offered for sale.

⁸⁵ Section 19-18-04 was also amended by section 3 of House Bill No. 1158, chapter 186.

3. Each registration covers a two-year period beginning January first 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, or from one place to another place or location. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date, or within the same month the pesticides are first manufactured or sold within this state. 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, 2003 2005) 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 registered.
3. Be accompanied by a current label of each product so registered.
4. Be accompanied by a registration fee of three hundred dollars for each product 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.

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. If after public hearing before the commissioner the application is denied, the product may not be offered for sale.

Each registration covers a two-year period beginning January first 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, or from one place to another place or location. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date, or within the same month the pesticides are first manufactured or sold within this state. 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.

SECTION 2. 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 \$250,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of controlling and eradicating saltcedar, for the biennium beginning July 1, 2003, and ending June 30, 2005. The agriculture commissioner shall report to the fifty-ninth legislative assembly the persons receiving funds under this Act, the dollars received, the efforts undertaken by the recipient to control and eradicate saltcedar, and the effectiveness of those efforts.

Approved April 11, 2003
Filed April 14, 2003

CHAPTER 188

SENATE BILL NO. 2081

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

PESTICIDE PERMITS AND USE

AN ACT to create and enact a new section to chapter 19-18 of the North Dakota Century Code, relating to experimental use permits; to amend and reenact section 4-35-06 of the North Dakota Century Code, relating to restricted use pesticides; and to repeal section 4-35-07 of the North Dakota Century Code, relating to experimental use permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-18 of the North Dakota Century Code is created and enacted as follows:

Experimental use permits. Provided the state is authorized by the administrator of the environmental protection agency to issue experimental use permits, the commissioner may:

1. Issue an experimental use permit to a person applying for a permit if the commissioner determines that the applicant requires the permit to accumulate information necessary to register a pesticide use. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.
2. Prescribe terms, conditions, and the period of time for use under the experimental use permit.
3. Revoke an experimental use permit, at any time, if the commissioner finds that its terms or conditions are being violated or that its term and conditions are inadequate to avoid unreasonable adverse effects to human health or the environment.

SECTION 2. AMENDMENT. Section 4-35-06 of the North Dakota Century Code is amended and reenacted as follows:

4-35-06. Pesticide control board to administer chapter and adopt regulations.

1. a. The pesticide control board shall administer this chapter and may adopt rules in accordance with chapter 28-32 to implement this chapter. The rules may prescribe methods to be used in the application of pesticides. The rules may relate to the time, place, manner, methods, materials, and amounts and concentrations, in connection with the application of the pesticide, and may restrict or prohibit use of pesticides in designated areas during specified periods of time and shall encompass all reasonable factors which the board deems necessary to prevent damage or injury by drift or misapplication to:

- (1) Plants, including forage plants, on adjacent or nearby lands.
 - (2) Wildlife in the adjoining or nearby areas.
 - (3) Fish and other aquatic life in waters in proximity to the area to be treated.
 - (4) Persons, animals, or beneficial insects.
- b. In adopting rules, the board shall give consideration to pertinent research findings and recommendations of other agencies of this state, the federal government, or other reliable sources.
2. ~~For the purpose of uniformity, the board may adopt restricted use classifications as determined by the federal environmental protection agency. The board may also by rule determine state restricted use pesticides for the state or designated areas within the state.~~
- ~~3.~~ The board, in adopting rules under this chapter, shall prescribe standards and requirements for the certification of applicators of pesticides. These standards and requirements must relate to the use and handling of pesticides. In determining these standards and requirements, the board shall take into consideration standards and requirements prescribed by the environmental protection agency.
4. 3. Rules adopted under this chapter may not permit any pesticide use which is prohibited by the Federal Insecticide, Fungicide, and Rodenticide Act or regulations or orders issued thereunder.
- ~~5.~~ 4. In order to comply with section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, the board may make such reports to the United States environmental protection agency in such form and containing such information as that agency may from time to time require.
- ~~6.~~ 5. Rules to implement this chapter may provide for:
- a. The collection, examination, and reporting of samples of pesticides.
 - b. The safe handling, transportation, storage, display, distribution, and disposal of pesticides and their containers.
 - c. The identification of pests under this chapter when the board finds particular organisms to be annoying or otherwise injurious or harmful to agriculture, health, and the environment.

SECTION 3. REPEAL. Section 4-35-07 of the North Dakota Century Code is repealed.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 189

SENATE BILL NO. 2110

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

FERTILIZER AND SOIL CONDITIONER REGISTRATION AND FEES

AN ACT to amend and reenact sections 19-20.1-03, 19-20.1-03.1 and 19-20.1-06 of the North Dakota Century Code, relating to registration and inspection fees of fertilizer and soil conditioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-20.1-03 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03. Registration. Each brand and grade of fertilizer, material, foliar fertilizer, micronutrient, specialty fertilizer, soil amendment, or plant amendment must be registered in the name of the person whose name appears upon the label before being offered for sale or distributed in this state. The application for registration must be submitted to the commissioner on a form furnished by the commissioner and must be accompanied by a fee of fifty dollars. Upon approval by the commissioner, a certificate of registration must be furnished to the applicant. Registrations cover a two-year period beginning July first and ending June thirtieth of every even-numbered year. Distribution of fertilizer products without prior registration or renewal received after July thirty-first must be assessed a penalty of twenty-five dollars per product. A distributor is not required to register any brand of fertilizer, soil amendment, or plant amendment that is already registered under this chapter by another person, providing the label complies with the issued registration. Compost that is transferred between parties without compensation is exempt from these requirements.

SECTION 2. AMENDMENT. Section 19-20.1-03.1 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-03.1. License required - Penalty. A person may not distribute any fertilizer, soil amendment, or plant amendment in this state without first obtaining a distributor's license from the commissioner. However, a distributor's license is not required for those distributors selling only specialty fertilizers. A license must be obtained for each location or mobile mechanical unit used by a distributor in the state. The application for the license must be submitted on a form furnished by the commissioner and must be accompanied by a fee of one hundred dollars. A license covers a two-year period beginning July first and ending June thirtieth ~~of the second ensuing year~~ every even-numbered year. License renewal applications received after July thirty-first may be assessed a penalty fee of twenty dollars. Licenses are not transferable, and each license must be conspicuously posted at each location and must accompany each mobile mechanical unit operating in the state.

SECTION 3. AMENDMENT. Section 19-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-06. Inspection fees and tonnage reports. There must be paid to the commissioner for all fertilizers, soil amendments, or plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. The inspection fee may not be less than ten dollars. Sales to manufacturers or exchanges between them are exempt from the inspection fee. Fees collected under this section must be used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter.

Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms], including the minimum ten dollar fee, as provided in this chapter.

Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a nonlicensed person in this state shall file with the commissioner, on forms furnished by the commissioner, an annual statement for the calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during the period. A licensed end user shall report all sales and purchases and pay the appropriate tonnage tax. The statement is due on or before January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of the amount must be assessed against the licensee, and the amount of fees due constitute a debt and become the basis of a judgment against the licensee.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 190

SENATE BILL NO. 2111

(Industry, Business and Labor Committee)
(At the request of the Agriculture Commissioner)

ANHYDROUS AMMONIA FACILITY LICENSING

AN ACT to amend and reenact section 19-20.2-03 of the North Dakota Century Code, relating to licensing of anhydrous ammonia facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-20.2-03 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-03. License required - ~~Construction of anhydrous~~ Construction of anhydrous ammonia facilities constructed after June 30, 1985. No anhydrous ammonia storage facility may be ~~constructed or~~ operated without a license issued by the commissioner of agriculture and the board of county commissioners of the county in which the facility is ~~to be~~ constructed. An application for a license to site and operate an anhydrous ammonia storage facility must be made to the commissioner of agriculture and to the board of county commissioners. The commissioner or the board may deny a license for failure to remit the proper fee to the commissioner of agriculture, for failure to comply with the siting requirements of this chapter and rules adopted pursuant to this chapter if constructed after June 30, 1985, or for failure to comply with local siting requirements. The commissioner of agriculture also may deny a license if the chief boiler inspector does not certify that the facility meets the initial inspection standards required by this chapter and by any rules adopted pursuant to this chapter. In order to obtain a license, an individual shall submit two sets of drawings or photographs and signed affidavits stating and showing the facility has been measured and meets the siting requirements along with the application for license. The drawings or photographs must show the proposed location of the tank, the locations, and the surroundings in all directions. One set of drawings or photographs is for the commissioner of agriculture and the other is for the board of county commissioners.

Approved April 8, 2003

Filed April 9, 2003

CHAPTER 191

HOUSE BILL NO. 1352

(Representatives DeKrey, Eckre, Nicholas)
(Senators Bowman, Flakoll, Schobinger)

ANHYDROUS AMMONIA SECURITY AND IMMUNITY

AN ACT to create and enact a new section to chapter 19-20.2 and a new section to chapter 32-03 of the North Dakota Century Code, relating to adoption of rules regarding the security of anhydrous ammonia nurse tanks and immunity for theft of anhydrous ammonia.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-20.2 of the North Dakota Century Code is created and enacted as follows:

Rules relating to security measures for nurse tanks. The insurance commissioner shall adopt rules identifying a critical methamphetamine use zone in the state and establishing appropriate security measures to be implemented by the owners and users of anhydrous ammonia nurse tanks located within the zone as a pilot project. The insurance commissioner may establish the duration of the pilot project, and may require the locking of anhydrous ammonia nurse tanks or other security measures as are deemed necessary to curb the illegal theft of anhydrous ammonia within the zone. The insurance commissioner shall enforce any rules adopted pursuant to this section.

SECTION 2. A new section to chapter 32-03 of the North Dakota Century Code is created and enacted as follows:

Immunity for theft of anhydrous ammonia. The owner of anhydrous ammonia is immune from civil liability for any loss, damage, or injury from the theft by another or attempted theft by another of anhydrous ammonia from the tank, equipment, or storage facility in which it is contained. For purposes of this section, "owner" means:

1. A person who lawfully owns anhydrous ammonia;
2. A person who lawfully owns a container, equipment, or storage facility containing anhydrous ammonia;
3. A person responsible for the installation or operation of an anhydrous ammonia container, equipment, or storage facility;
4. A person who lawfully sells anhydrous ammonia;
5. A person who lawfully purchases anhydrous ammonia for agricultural purposes; and

6. A person who operates or uses anhydrous ammonia containers, equipment, or storage facilities when lawfully applying anhydrous ammonia for agricultural purposes.

Approved April 7, 2003

Filed April 7, 2003

GAME, FISH, PREDATORS, AND BOATING

CHAPTER 192

HOUSE BILL NO. 1343

(Representatives Hanson, Porter)
(Senator Fischer)

UNLAWFUL TAKING OF BIG GAME

AN ACT to amend and reenact section 20.1-01-03 of the North Dakota Century Code, relating to unlawfully taking big game animals; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-01-03 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-03. Ownership and control of wildlife is in the state - Damages - Schedule of monetary values - Civil penalty. The ownership of and title to all wildlife within this state is in the state for the purpose of regulating the enjoyment, use, possession, disposition, and conservation thereof, and for maintaining action for damages as herein provided. Any person catching, killing, taking, trapping, or possessing any wildlife protected by law at any time or in any manner is deemed to have consented that the title thereto remains in this state for the purpose of regulating the taking, use, possession, and disposition thereof. The state, through the office of attorney general, may institute and maintain any action for damages against any person who unlawfully causes, or has caused within this state, the death, destruction, or injury of wildlife, except as may be authorized by law. The state has a property interest in all protected wildlife. This interest supports a civil action for damages for the unlawful destruction of wildlife by willful or grossly negligent act or omission. The director shall adopt by rule a schedule of monetary values of various species of wildlife, the values to represent the replacement costs of the wildlife and the value lost to the state due to the destruction or injury of the species, together with other material elements of value. In any action brought under this section, the schedule constitutes the measure of recovery for the wildlife killed or destroyed. Notwithstanding the director's schedule of monetary values, an individual who unlawfully takes a bighorn sheep, elk, or moose is subject to a civil penalty for the replacement value of the animal of five thousand dollars for a bighorn sheep, three thousand dollars for an elk, and two thousand dollars for a moose. For a male bighorn sheep, elk, or moose over two and one-half years of age, the civil penalty for the replacement value of the animal is an additional fifty percent of the penalty. The funds recovered must be deposited in the general fund, and devoted to the propagation and protection of desirable species of wildlife.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 193**SENATE BILL NO. 2401**

(Senators Christmann, Freborg)
(Representatives Clark, Kreidt, Porter)

TAKING RACCOONS WITH FLASHLIGHTS

AN ACT to amend and reenact sections 20.1-01-08 and 20.1-01-09 and subsection 3 of section 20.1-05-04 of the North Dakota Century Code, relating to the use of flashlights in taking raccoons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-01-08 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-08. Hunting with artificial light prohibited - Exception. It is unlawful for ~~any person~~ an individual to pursue, shoot, kill, take or attempt to take any wildlife between sunset of one day and sunrise of the next, with the aid of a spotlight or any other artificial light. This section does not make it unlawful for ~~any person~~ an individual to use a lantern, spotlight, or other artificial light to assist the person in pursuing and shooting on the person's premises any coyote, fox, skunk, mink, raccoon, weasel, owl, rabbit, or other predatory animal or bird, attacking and attempting to destroy the person's poultry, livestock, or other property. It is permissible to use an artificial light with a power source of not more than ~~two cells in the aggregate of four~~ six volts while hunting afoot for raccoon during the open season on ~~such~~ the animal. A red or amber filter must be placed on any artificial light used in the hunting of raccoon, except when taking a raccoon treed or at bay.

SECTION 2. AMENDMENT. Section 20.1-01-09 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-09. Types of guns lawfully usable in taking raccoon with flashlight - Penalty. In the killing, shooting, pursuing, taking or in attempting to take raccoon with the use of a flashlight with a power source of not over ~~two cells in the aggregate of four~~ six volts, it is illegal to use a rifle or handgun capable of firing a shell larger than a twenty-two caliber [5.59 millimeter] long rifle shell, or a shotgun larger than four-ten gauge [10.41 millimeters]. ~~Any person~~ An individual who violates this section is guilty of a class 1 noncriminal offense.

SECTION 3. AMENDMENT. Subsection 3 of section 20.1-05-04 of the North Dakota Century Code is amended and reenacted as follows:

3. Engage in the practice commonly known as shining for deer. ~~Any person~~ An individual who shines any area commonly frequented by big game animals with any artificial light, between the hours of sunset and sunrise, is in violation of this section. However, ~~any person~~ an individual may use a flashlight with a power source of not over ~~two cells in the aggregate of four~~ six volts to take raccoon.

CHAPTER 194

SENATE BILL NO. 2237

(Senators Heitkamp, G. Lee)

(Representatives Amerman, Carlson, R. Kelsch, Nelson)

CROSSBOW HUNTING BY BLIND

AN ACT to amend and reenact subsection 12 of section 20.1-02-05 of the North Dakota Century Code, relating to the power of the director of the game and fish department to issue special crossbow hunting permits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸⁶ **SECTION 1. AMENDMENT.** Subsection 12 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

12. Issue to ~~any person~~, an individual who is blind, is a paraplegic, or who has lost the use of one or both arms; a special permit to hunt game with a crossbow if that ~~person~~ individual otherwise complies with and qualifies under the licensing and other provisions of this title. For purposes of this subsection, an individual who is blind means an individual who is totally blind, whose central visual acuity does not exceed twenty/two hundred in the better eye with corrective lenses, or in whom the widest diameter of the visual field is no greater than twenty degrees.

Approved March 25, 2003

Filed March 25, 2003

⁸⁶ Section 20.1-02-05 was also amended by section 1 of House Bill No. 1224, chapter 196, section 2 of House Bill No. 1050, chapter 202, section 1 of House Bill No. 1358, chapter 197, and section 1 of Senate Bill No. 2322, chapter 195.

CHAPTER 195

SENATE BILL NO. 2322

(Senators Nelson, Andrist, Christenson, Every)
(Representatives Ekstrom, Nelson)

NONRESIDENT STUDENT HUNTING

AN ACT to amend and reenact subsection 13 of section 20.1-02-05 and section 20.1-03-07.1 of the North Dakota Century Code, relating to hunting by nonresident students.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸⁷ **SECTION 1. AMENDMENT.** Subsection 13 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

13. Issue any resident license prescribed by this title to a person who has come to the state with a bona fide intention of becoming a resident, even though that person has not been a resident of this state for the required time period immediately preceding the application for the license; ~~or;~~ to any person who is a member of the United States armed forces and who is within the state on duty or leave; ~~or;~~ to any employee of the United States fish and wildlife service or the conservation department of any state or province of Canada in the state to advise or consult with the department; ~~or;~~ to any nonresident full-time student living in this state who is a resident of a state that is a member of the midwest student exchange program or the western undergraduate exchange program attending an institution under the jurisdiction of the state board of higher education or a tribal college. Except for a license issued to a nonresident full-time student living in this state who is a resident of a state that is a member of the midwest student exchange program or the western undergraduate exchange program attending an institution under the jurisdiction of the state board of higher education or a tribal college, a license may not be issued under this subsection unless an affidavit of a bona fide resident, setting forth the actual conditions, accompanies the application. This subsection does not apply to lottery permits, except that the director shall issue a resident deer hunting license to any resident of this state who is a member of the United States armed forces stationed outside this state and who shows proof of North Dakota residence and who pays the appropriate licensing fee. A deer license issued to a member of the United States armed forces under this subsection must be issued without being subject to the lottery for deer hunting licenses.

⁸⁷ Section 20.1-02-05 was also amended by section 1 of House Bill No. 1224, chapter 196, section 2 of House Bill No. 1050, chapter 202, section 1 of House Bill No. 1358, chapter 197, and section 1 of Senate Bill No. 2237, chapter 194.

⁸⁸ **SECTION 2. AMENDMENT.** Section 20.1-03-07.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-07.1. 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 person first obtains a nonresident waterfowl hunting license, in addition to a nonresident small game hunting license. The nonresident waterfowl hunting license entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days, any period of seven 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 one 7-day hunting period allows hunting statewide. A license authorizing two 7-day hunting periods allows hunting in a specified zone during each period. 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 April 9, 2003
Filed April 9, 2003

⁸⁸ Section 20.1-03-07.1 was also amended by section 3 of House Bill No. 1050, chapter 202, section 3 of House Bill No. 1358, chapter 197, and section 1 of Senate Bill No. 2242, chapter 198.

CHAPTER 196**HOUSE BILL NO. 1224**

(Representatives Porter, Bernstein, Drovdal, Herbel)
(Senator Tollefson)

WATERFOWL RESTING AREAS

AN ACT to create and enact a new subsection to section 20.1-02-05 of the North Dakota Century Code, relating to waterfowl resting areas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸⁹ **SECTION 1.** A new subsection to section 20.1-02-05 of the North Dakota Century Code is created and enacted as follows:

Carry out a program that targets waterfowl resting areas within the private lands initiative program which includes payments to private landowners for lease of waterfowl resting areas on private lands that during the term of the lease provides limited public access for the hunting of waterfowl.

Approved March 25, 2003
Filed March 25, 2003

⁸⁹ Section 20.1-02-05 was also amended by section 2 of House Bill No. 1050, chapter 202, section 1 of House Bill No. 1358, chapter 197, section 1 of Senate Bill No. 2237, chapter 194, and section 1 of Senate Bill No. 2322, chapter 195.

CHAPTER 197

HOUSE BILL NO. 1358

(Representatives Porter, Carlson, Hanson, Nelson)
(Senators Fischer, Tollefson)

NONRESIDENT HUNTING AND FISHING LICENSE FEES

AN ACT to amend and reenact subsection 27 of section 20.1-02-05, subsection 1 of section 20.1-03-07, and sections 20.1-03-07.1, 20.1-03-12, and 20.1-03-12.1 of the North Dakota Century Code, relating to nonresident hunting and fishing licenses and fees; to provide an appropriation; to provide a statement of legislative intent with respect to a short-term lease program; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹⁰ **SECTION 1. AMENDMENT.** Subsection 27 of section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

27. Issue, as a means of rewarding dedication to teaching firearm hunter safety, complimentary lifetime resident certificates provided under subsection ~~53~~ 52 of section 20.1-03-12 and combination licenses provided under section 20.1-03-11.1 to resident certified hunter education volunteer instructors. Eligible persons must have served as a lead or assistant certified hunter education volunteer instructor in this state for a minimum of one course in each of thirty years. The license is known as the "lifetime combination license" and must be signed by the director and the person receiving the license. The license must be revoked by the director if the licenseholder is convicted of a felony or found to have violated any provision of this title.

SECTION 2. AMENDMENT. Subsection 1 of section 20.1-03-07 of the North Dakota Century Code is amended and reenacted as follows:

1. Hunt, catch, take, or kill any small game without a nonresident small game license. The nonresident small game license entitles the nonresident to hunt small game for any period of ten consecutive days or any two periods of five consecutive days each. The hunting period for which the license is valid must be designated on the license. A nonresident small game license is not required to hunt waterfowl under section 20.1-03-07.1. A nonresident may purchase more than one nonresident small game license per year.

⁹⁰ Section 20.1-02-05 was also amended by section 1 of House Bill No. 1224, chapter 196, section 2 of House Bill No. 1050, chapter 202, section 1 of Senate Bill No. 2237, chapter 194, and section 1 of Senate Bill No. 2322, chapter 195.

⁹¹ **SECTION 3. AMENDMENT.** Section 20.1-03-07.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-07.1. Nonresident waterfowl hunting license required. Except as provided in sections 20.1-03-07.2 and 20.1-03-07.3, a nonresident may not hunt waterfowl unless that person first obtains a nonresident waterfowl hunting license, ~~in addition to a nonresident small game hunting license.~~ The nonresident waterfowl hunting license entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days, any period of seven 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 one 7-day hunting period allows hunting statewide. A license authorizing two 7-day hunting periods allows hunting in a specified zone during each period. 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.

⁹² **SECTION 4. 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, ~~seventy-five~~ 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. For a nonresident big game hunting license, one hundred fifty-five dollars, and for a nonresident bow license, one hundred fifty-five 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.
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.

⁹¹ Section 20.1-03-07.1 was also amended by section 3 of House Bill No. 1050, chapter 202, section 1 of Senate Bill No. 2242, chapter 198, and section 2 of Senate Bill No. 2322, chapter 195.

⁹² Section 20.1-03-12 was also amended by section 5 of House Bill No. 1050, chapter 202, section 1 of House Bill No. 1391, chapter 201, section 5 of House Bill No. 1358, chapter 197, and section 2 of Senate Bill No. 2363, chapter 200.

7. For a nonresident fishing license, twenty-five dollars.
8. For a nonresident short-term seven-day fishing license, fifteen dollars.
9. For a resident husband and wife fishing license, fourteen dollars.
10. For a nonresident nongame hunting license, fifteen dollars.
11. For a 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.
14. 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.
15. 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.
16. For a license to a resident traveling agent, buyer, or shipper of green furs, twenty dollars.
17. For an annual license to practice taxidermy, twenty-five dollars.
18. 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.
19. For a permit to make collections of protected birds and animals for scientific purposes, ten dollars.
20. 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.
21. 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.~~ 22. 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.~~ 23. ~~For a license to erect, have, and maintain on the ice in this state a fishhouse used or to be used to protect one while ice fishing or a dark house used or to be used for spearfishing, ten dollars for each unit.~~
- ~~24.~~ 24. For a resident paddlefish tag annual license, three dollars per tag.
- ~~25.~~ ~~24.~~ 24. For a nonresident paddlefish tag annual license, seven dollars and fifty cents per tag.
- ~~26.~~ ~~25.~~ 25. For an annual resident license to sell minnows or other live bait at wholesale, thirty dollars.
- ~~27.~~ ~~26.~~ 26. 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.
- ~~28.~~ ~~27.~~ 27. For an annual license to operate a private fish hatchery, seventy-five dollars.
- ~~29.~~ ~~28.~~ 28. For a resident commercial frog license, fifty dollars.
- ~~30.~~ ~~29.~~ 29. For a nonresident commercial frog license, two hundred dollars.
- ~~31.~~ ~~30.~~ 30. For a resident frog license, three dollars.
- ~~32.~~ ~~31.~~ 31. For a resident husband and wife frog license, five dollars.
- ~~33.~~ ~~32.~~ 32. For a shooting preserve operating permit:
- a. One hundred dollars, if the shooting preserve consists of an area of six hundred forty acres [259 hectares] or less; or
 - b. One hundred dollars, if the shooting preserve consists of an area of more than six hundred forty acres [259 hectares], plus fifty cents per acre [.40 hectare] for each acre [.40 hectare] over six hundred forty acres [259 hectares].
- ~~34.~~ ~~33.~~ 33. For an annual license to guide for both hunting and fishing, one hundred fifty dollars.
- ~~35.~~ ~~34.~~ 34. For an annual license to guide only for hunting, one hundred dollars.
- ~~36.~~ ~~35.~~ 35. For an annual license to guide only for fishing, one hundred dollars.

- ~~37.~~ 36. For a nonresident waterfowl hunting license, ~~ten~~ eighty-five dollars.
- ~~38.~~ 37. For a nonresident husband and wife fishing license, thirty-five dollars.
- ~~39.~~ 38. For a nonresident short-term three-day fishing license, ten dollars.
- ~~40.~~ 39. For a nonresident fur-bearer and nongame hunting license, twenty-five dollars.
- ~~41.~~ 40. For a combination license, twenty-seven dollars.
- ~~42.~~ 41. For a white-tailed deer license sold to certified guides or outfitters and provided by them to nonresidents, two hundred fifty dollars.
- ~~43.~~ 42. For a resident swan license, five dollars.
- ~~44.~~ 43. For a nonresident swan license, twenty-five dollars.
- ~~45.~~ 44. For a resident and nonresident sandhill crane license, five dollars.
- ~~46.~~ 45. For a resident commercial clam license, one hundred dollars.
- ~~47.~~ 46. For a nonresident commercial clam license, one thousand dollars.
- ~~48.~~ 47. 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.
- ~~49.~~ 48. For an annual nonresident license to sell minnows or other live bait at wholesale, two hundred dollars.
- ~~50.~~ 49. For a bighorn sheep license issued to a nonresident, five hundred dollars.
- ~~51.~~ 50. For a nonresident reciprocal trapping license, two hundred fifty dollars.
- ~~52.~~ 51. For a nonresident spring white goose license, fifty dollars.
- ~~53.~~ 52. 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.

The fees for these licenses and permits, except for motorboat license fees, must be deposited with the state treasurer and credited to the game and fish fund.

⁹³ **SECTION 5. AMENDMENT.** Section 20.1-03-12 of the North Dakota Century Code is amended and reenacted as follows:

⁹³ Section 20.1-03-12 was also amended by section 5 of House Bill No. 1050, chapter 202, section 4 of House Bill No. 1358, chapter 197, section 1 of House Bill No. 1391, chapter 201, and section 2 of Senate Bill No. 2363, chapter 200.

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, seventy-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. For a nonresident big game hunting license, one hundred fifty-five dollars, and for a nonresident bow license, one hundred fifty-five 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.
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, ~~twenty-five~~ thirty-five dollars.
8. For a nonresident short-term seven-day fishing license, ~~fifteen~~ 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 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.
14. 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.
15. 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.
16. For a license to a resident traveling agent, buyer, or shipper of green furs, twenty dollars.
17. For an annual license to practice taxidermy, twenty-five dollars.
18. 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.

19. For a permit to make collections of protected birds and animals for scientific purposes, ten dollars.
20. 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.
21. 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. 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. ~~For a license to erect, have, and maintain on the ice in this state a fishhouse used or to be used to protect one while ice fishing or a dark house used or to be used for spearfishing, ten dollars for each unit.~~
- ~~24.~~ For a resident paddlefish tag annual license, three dollars per tag.
- ~~25.~~ 24. For a nonresident paddlefish tag annual license, seven dollars and fifty cents per tag.
- ~~26.~~ 25. For an annual resident license to sell minnows or other live bait at wholesale, thirty dollars.
- ~~27.~~ 26. 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.
- ~~28.~~ 27. For an annual license to operate a private fish hatchery, seventy-five dollars.

- ~~29.~~ 28. For a resident commercial frog license, fifty dollars.
- ~~30.~~ 29. For a nonresident commercial frog license, two hundred dollars.
- ~~31.~~ 30. For a resident frog license, three dollars.
- ~~32.~~ 31. For a resident husband and wife frog license, five dollars.
- ~~33.~~ 32. For a shooting preserve operating permit:
- a. One hundred dollars, if the shooting preserve consists of an area of six hundred forty acres [259 hectares] or less; or
 - b. One hundred dollars, if the shooting preserve consists of an area of more than six hundred forty acres [259 hectares], plus fifty cents per acre [.40 hectare] for each acre [.40 hectare] over six hundred forty acres [259 hectares].
- ~~34.~~ 33. For an annual license to guide for both hunting and fishing, one hundred fifty dollars.
- ~~35.~~ 34. For an annual license to guide only for hunting, one hundred dollars.
- ~~36.~~ 35. For an annual license to guide only for fishing, one hundred dollars.
- ~~37.~~ 36. For a nonresident waterfowl hunting license, ten dollars.
- ~~38.~~ 37. For a nonresident husband and wife fishing license, ~~thirty-five~~ forty-five dollars.
- ~~39.~~ 38. For a nonresident short-term three-day fishing license, ~~ten~~ fifteen dollars.
- ~~40.~~ 39. For a nonresident fur-bearer and nongame hunting license, twenty-five dollars.
- ~~41.~~ 40. For a combination license, ~~twenty-seven~~ thirty-two dollars.
- ~~42.~~ 41. For a white-tailed deer license sold to certified guides or outfitters and provided by them to nonresidents, two hundred fifty dollars.
- ~~43.~~ 42. For a resident swan license, five dollars.
- ~~44.~~ 43. For a nonresident swan license, twenty-five dollars.
- ~~45.~~ 44. For a resident and nonresident sandhill crane license, five dollars.
- ~~46.~~ 45. For a resident commercial clam license, one hundred dollars.
- ~~47.~~ 46. For a nonresident commercial clam license, one thousand dollars.
- ~~48.~~ 47. 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.

- ~~49.~~ 48. For an annual nonresident license to sell minnows or other live bait at wholesale, two hundred dollars.
- ~~50.~~ 49. For a bighorn sheep license issued to a nonresident, five hundred dollars.
- ~~51.~~ 50. For a nonresident reciprocal trapping license, two hundred fifty dollars.
- ~~52.~~ 51. For a nonresident spring white goose license, fifty dollars.
- ~~53.~~ 52. 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.

The fees for these licenses and permits, except for motorboat license fees, must be deposited with the state treasurer and credited to the game and fish fund.

SECTION 6. AMENDMENT. Section 20.1-03-12.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-12.1. Habitat restoration stamp required - Use of revenue - Land purchases not allowed. Except for licenses issued under section 20.1-03-07.3, a habitat restoration stamp is required for every resident and nonresident general game license for which a stamp fee of ~~five~~ ten dollars must be charged. The habitat restoration stamp fee is in addition to the annual general game license fee charged under section 20.1-03-12. Land may not be purchased with habitat restoration stamp moneys. All moneys generated by habitat restoration stamp fees must be placed in the game and fish private land habitat and access improvement fund with five dollars of the fee allocated to the private land open to sportsmen program.

SECTION 7. APPROPRIATION. There is appropriated out of any moneys in the game and fish fund in the state treasury, not otherwise appropriated, the sum of \$3,300,000, or so much of the sum as may be necessary, to the game and fish department for the purpose of increasing funding for the private land open to sportsmen program, for the biennium beginning July 1, 2003, and ending June 30, 2005. The game and fish department is authorized an additional five full-time equivalent employees to carry out the private land open to sportsmen program.

SECTION 8. LEGISLATIVE INTENT. It is the intent of the fifty-eighth legislative assembly that the game and fish department use the funds appropriated in section 7 of this Act to create a new short-term lease program that targets the best access areas in portions of the state that are most impacted with hunting access problems within the private land open to sportsmen program.

SECTION 9. EFFECTIVE DATE. Section 5 of this Act becomes effective on April 1, 2004.

Approved April 7, 2003
Filed April 7, 2003

CHAPTER 198**SENATE BILL NO. 2242**

(Senators Heitkamp, Espegard, Fischer)
(Representatives Amerman, Gulleson, Nelson)

NONRESIDENT GOOSE HUNTING

AN ACT to amend and reenact section 20.1-03-07.1 of the North Dakota Century Code, relating to hunting of Canada geese by nonresidents; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹⁴ **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. Nonresident waterfowl hunting license required. Except as provided in sections 20.1-03-07.2 and 20.1-03-07.3, a nonresident may not hunt waterfowl unless that person first obtains a nonresident waterfowl hunting license, in addition to a nonresident small game hunting license. The nonresident waterfowl hunting license entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days, any period of seven 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 one 7-day hunting period allows hunting statewide. A license authorizing two 7-day hunting periods allows hunting in a specified zone during each period. 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, seven-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.

SECTION 2. EXPIRATION DATE. This Act is effective through December 31, 2007, and after that date is ineffective.

Approved April 9, 2003
Filed April 9, 2003

⁹⁴ Section 20.1-03-07.1 was also amended by section 3 of House Bill No. 1050, chapter 202, section 3 of House Bill No. 1358, chapter 197, and section 2 of Senate Bill No. 2322, chapter 195.

CHAPTER 199

HOUSE BILL NO. 1380

(Representatives Monson, Froelich, D. Johnson, Nelson)
(Senator Fischer)

GRATIS DEER HUNTING LICENSES

AN ACT to amend and reenact subsection 3 of section 20.1-03-11 of the North Dakota Century Code, relating to gratis licenses to hunt deer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹⁵ **SECTION 1. AMENDMENT.** Subsection 3 of section 20.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

3. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a person who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt deer without charge, or if that person is a nonresident upon payment of the fee requirement for a nonresident big game license, upon filing a signed application describing that land. The land must be within a unit open for the hunting of deer. The license must include a legal description of the eligible land described in the completed application and may be used to hunt deer only upon that land. A license issued under this subsection is valid for the deer bow, deer gun, and muzzleloader seasons until filled. However, a person, that person's spouse, and their children who have a license issued under this subsection may hunt together on land described in any of the affidavits making them eligible for the license. Family members hunting together under this provision shall hunt within the same unit within which the land described in the affidavit making them eligible for the license is located. Upon request, a lessee shall provide proof that the land described in the completed application is leased for agricultural purposes. A person who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with that person, but no more than one license may be issued under this subsection for any qualifying land. A person transferring eligibility under this subsection may not receive a license under this subsection for the season for which the eligibility was transferred. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license.

Approved March 17, 2003
Filed March 17, 2003

⁹⁵ Section 20.1-03-11 was also amended by section 1 of Senate Bill No. 2215, chapter 204, and section 1 of Senate Bill No. 2363, chapter 200.

CHAPTER 200

SENATE BILL NO. 2363

(Senators Erbele, Heitkamp, Thane)
(Representatives Froelich, Gulleson, Weisz)

NONRESIDENT DEER HUNTING

AN ACT to amend and reenact subsection 4 of section 20.1-03-11 and subsection 4 of section 20.1-03-12 of the North Dakota Century Code, relating to deer hunting by nonresidents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹⁶ **SECTION 1. AMENDMENT.** Subsection 4 of section 20.1-03-11 of the North Dakota Century Code is amended and reenacted as follows:

- 4. One percent of the total deer licenses and permits to hunt deer with guns to be issued in any unit or subunit as described in the governor's proclamation, including licenses issued to nonresidents under subsection 3, must be allocated for nonresidents. Notwithstanding the number of licenses allocated under this subsection, upon payment of the fee requirement for a nonresident ~~big game license~~ who participates on the same basis as a resident in a lottery for deer licenses remaining after the second lottery for residents, a nonresident may participate on the same basis as a resident in a lottery for deer licenses remaining after the second lottery for residents.

⁹⁷ **SECTION 2. AMENDMENT.** Subsection 4 of section 20.1-03-12 of the North Dakota Century Code is amended and reenacted as follows:

- 4. ~~For~~ 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, one hundred fifty-five dollars, and for a nonresident bow license, one hundred fifty-five 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.

Approved April 23, 2003
Filed April 23, 2003

⁹⁶ Section 20.1-03-11 was also amended by section 1 of House Bill No. 1380, chapter 199, and section 1 of Senate Bill No. 2215, chapter 204.

⁹⁷ Section 20.1-03-12 was also amended by section 5 of House Bill No. 1050, chapter 202, section 4 of House Bill No. 1358, chapter 197, section 5 of House Bill No. 1358, chapter 197, and section 1 of House Bill No. 1391, chapter 201.

CHAPTER 201

HOUSE BILL NO. 1391

(Representatives DeKrey, Weisz)

BIG GAME HUNTING LICENSE FEES

AN ACT to amend and reenact section 20.1-03-12 of the North Dakota Century Code, relating to big game hunting license fees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹⁸ **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, seventy-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. For a nonresident big game hunting license, ~~one two hundred fifty-five~~ ~~one two hundred fifty-five~~ dollars, and for a nonresident bow license, ~~one two hundred fifty-five~~ ~~one two hundred fifty-five~~ 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.
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, twenty-five dollars.
8. For a nonresident short-term seven-day fishing license, fifteen dollars.
9. For a resident husband and wife fishing license, fourteen dollars.
10. For a nonresident nongame hunting license, fifteen dollars.

⁹⁸ Section 20.1-03-12 was also amended by section 5 of House Bill No. 1050, chapter 202, section 4 of House Bill No. 1358, chapter 197, section 5 of House Bill No. 1358, chapter 197, and section 2 of Senate Bill No. 2363, chapter 200.

11. For a 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.
14. 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.
15. 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.
16. For a license to a resident traveling agent, buyer, or shipper of green furs, twenty dollars.
17. For an annual license to practice taxidermy, twenty-five dollars.
18. 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.
19. For a permit to make collections of protected birds and animals for scientific purposes, ten dollars.
20. 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.
21. 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. 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. For a license to erect, have, and maintain on the ice in this state a fishhouse used or to be used to protect one while ice fishing or a dark house used or to be used for spearfishing, ten dollars for each unit.
24. For a resident paddlefish tag annual license, three dollars per tag.
25. For a nonresident paddlefish tag annual license, seven dollars and fifty cents per tag.
26. For an annual resident license to sell minnows or other live bait at wholesale, thirty dollars.
27. 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.
28. For an annual license to operate a private fish hatchery, seventy-five dollars.
29. For a resident commercial frog license, fifty dollars.
30. For a nonresident commercial frog license, two hundred dollars.
31. For a resident frog license, three dollars.
32. For a resident husband and wife frog license, five dollars.
33. For a shooting preserve operating permit:
- a. One hundred dollars, if the shooting preserve consists of an area of six hundred forty acres [259 hectares] or less; or
 - b. One hundred dollars, if the shooting preserve consists of an area of more than six hundred forty acres [259 hectares], plus fifty cents per acre [.40 hectare] for each acre [.40 hectare] over six hundred forty acres [259 hectares].
34. For an annual license to guide for both hunting and fishing, one hundred fifty dollars.
35. For an annual license to guide only for hunting, one hundred dollars.
36. For an annual license to guide only for fishing, one hundred dollars.
37. For a nonresident waterfowl hunting license, ten dollars.

38. For a nonresident husband and wife fishing license, thirty-five dollars.
39. For a nonresident short-term three-day fishing license, ten dollars.
40. For a nonresident fur-bearer and nongame hunting license, twenty-five dollars.
41. For a combination license, twenty-seven dollars.
42. For a white-tailed deer license sold to certified guides or outfitters and provided by them to nonresidents, two hundred fifty dollars.
43. For a resident swan license, five dollars.
44. For a nonresident swan license, twenty-five dollars.
45. For a resident and nonresident sandhill crane license, five dollars.
46. For a resident commercial clam license, one hundred dollars.
47. For a nonresident commercial clam license, one thousand dollars.
48. 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.
49. For an annual nonresident license to sell minnows or other live bait at wholesale, two hundred dollars.
50. For a bighorn sheep license issued to a nonresident, five hundred dollars.
51. For a nonresident reciprocal trapping license, two hundred fifty dollars.
52. For a nonresident spring white goose license, fifty dollars.
53. 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.

The fees for these licenses and permits, except for motorboat license fees, 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.

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

Approved April 21, 2003

Filed April 21, 2003

CHAPTER 202

HOUSE BILL NO. 1050

(Legislative Council)
(Judiciary B Committee)

GUIDE AND OUTFITTER LICENSING

AN ACT to create and enact sections 20.1-03-36.1, 20.1-03-36.2, 20.1-03-38, 20.1-03-39, and 20.1-03-40 of the North Dakota Century Code, relating to the licensing of guides and outfitters; to amend and reenact sections 20.1-01-02, 20.1-02-05, 20.1-03-07.1, 20.1-03-11.2, 20.1-03-12, 20.1-03-36, and 20.1-03-37 of the North Dakota Century Code, relating to guides and outfitters and nonresident waterfowl hunters; to provide a penalty; to provide for application; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 20.1-01-02 of the North Dakota Century Code is amended and reenacted as follows:

20.1-01-02. Definitions. In this title, unless the context or ~~subject matter~~ otherwise requires:

1. "Afield" means being away from one's home or camp. The term does not include driving or being in actual physical control of a motor vehicle in violation of section 39-08-01 or equivalent ordinance.
2. "Any part thereof" or "the parts thereof" includes the hide, horns, or hoofs of any animal specified and the plumage, skin, and every other part of any bird specified.
3. "Associated equipment" means:
 - a. Any system, part, or component of a boat as originally manufactured or any similar part or component manufactured or sold for replacement, repair, or improvement of such system, part, or component;
 - b. Any accessory or equipment for, or appurtenance to, a boat; and
 - c. Any marine safety article, accessory, or equipment intended for use by a person on board a boat; but
 - d. Excluding radio equipment.
4. "Big game" means deer, moose, elk, bighorn sheep, mountain goats, and antelope.
5. "Boat" means any vessel:
 - a. Manufactured or used primarily for noncommercial use;

- b. Leased, rented, or chartered to another for the latter's noncommercial use; or
 - c. Engaged in the carrying of six or fewer passengers.
6. "Confiscate" or "confiscated" means to hold subject to the order of a court of competent jurisdiction.
7. "Consideration" means something of value given or done in exchange for something of value given or done by another.
8. "Day leasing" means the practice of an outfitter entering a short-term lease agreement that is intended to and does last less than twenty-four hours.
9. "Department" means the game and fish department.
- ~~8.~~ 10. "Deputy director" means the deputy director of the department.
- ~~9.~~ 11. "Director" means the director of the department.
- ~~10.~~ 12. "Endangered species" means any species whose prospects of survival or recruitment within the state are in jeopardy due to any of the following factors:
- a. The destruction, drastic modification, or severe curtailment of its habitat.
 - b. Its overutilization for scientific, commercial, or sporting purposes.
 - c. The effect on it of disease, pollution, or predation.
 - d. Other natural or manmade factors affecting its prospects of survival or recruitment within the state.
 - e. Any combination of the foregoing factors.
- The term also includes any species classified as endangered pursuant to the Endangered Species Act of 1973, Public Law 93-205.
- ~~44.~~ 13. "Established road or trail" means any public highway or road, improved or otherwise, dedicated for public ingress or egress, or any other road or trail normally used for travel but does not include temporary trails across cultivated land used for agricultural purposes.
- ~~42.~~ 14. "Fur-bearers" includes mink, muskrats, weasels, wolverines, otters, martens, fishers, kit or swift foxes, beavers, raccoons, badgers, wolves, coyotes, bobcats, lynx, mountain lions, black bears, and red or gray foxes.
- ~~43.~~ 15. "Game birds" includes all varieties of geese, brant, swans, ducks, plovers, snipes, woodcocks, grouse, sagehens, pheasants, Hungarian partridges, quails, partridges, cranes, rails, coots, wild turkeys, mourning doves, and crows.

- ~~14.~~ 16. "Guide" or "~~outfitter~~" means ~~any resident an individual who holds that person out to the public as a guide or outfitter, and who provides, for compensation, transportation, equipment, arrangement of lodging, or that person's own or another's personal services for the primary purpose of assisting a person or persons to locate or catch fish or to locate, pursue, or hunt small game, big game, or fur-bearers. Nonresidents are not entitled to act as guides or outfitters in this state~~ is employed by or contracts with a licensed outfitter to help the outfitter furnish personal services for the conduct of outdoor recreational activities directly related to the conduct of activities for which the employing outfitter is licensed.
- ~~15.~~ 17. "Gun dogs" includes any dog used to hunt protected wildlife.
- ~~16.~~ 18. "Harmful wild birds" includes blackbirds, magpies, English sparrows, and starlings.
- ~~17.~~ 19. "Harmless wild birds" includes all wild birds not defined herein as "harmful wild birds" or "game birds".
- ~~18.~~ 20. "Hunt" or "hunting" means shooting, shooting at, pursuing, taking, attempting to take, or killing any game animals and game birds; searching for or attempting to locate or flush any game animals and game birds; luring, calling, or attempting to attract game animals and game birds; hiding for the purpose of taking or attempting to take game animals and game birds; and walking, crawling, or advancing toward wildlife while possessing implements or equipment useful in the taking of game animals or game birds. The term does not include possessing or using photographic equipment.
- ~~19.~~ 21. "Manufacturer" means any person engaged in:
- a. The manufacture, construction, or assembly of boats or associated equipment.
 - b. The manufacture or construction of components for boats and associated equipment to be sold for subsequent assembly.
 - c. The importation into the state for sale of boats, associated equipment, or components thereof.
- ~~20.~~ 22. "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion. The term does not include a vessel having a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.
- ~~21.~~ 23. "Motor-driven vehicle" means any land vehicle, with or without wheels, that is propelled by any motor.
- ~~22.~~ 24. "Operate" means to navigate or otherwise use a motorboat or a vessel.
- ~~23.~~ 25. "Outfitter" means an individual who, while engaging in any of the acts enumerated in this subsection in any manner, advises or otherwise holds the individual's business operation out to the public for hire or consideration; provides facilities or services for consideration; or maintains, leases, or otherwise uses equipment or accommodations for

consideration for the conduct of outdoor recreational activities, including hunting animals or birds and fishing on lakes, reservoirs, rivers, and streams. An outfitter may act as a guide. The term does not include a person holding title or an equitable interest in business operations if the primary purpose of the business operation is to provide food or lodging to the general public, chamber of commerce activities, travel agencies, or others that offer free information to attract outdoor and recreational use of their communities.

26. "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.
- ~~24.~~ 27. "Passenger" means every person carried on board a vessel other than:
- a. The owner or the owner's representative.
 - b. The operator.
 - c. Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services.
 - d. Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for that person's carriage.
- ~~25.~~ 28. "Person" includes every partnership, association, corporation, and limited liability company. No violation of this title may be excused because it was done as the agent or employee of another, nor because it was committed by or through an agent or employee of the person charged.
- ~~26.~~ 29. "Personal watercraft" means a motorboat that is powered by an inboard motor powering a water jet pump or by an inboard or outboard marine engine and which is designed to be operated by a person sitting, standing, or kneeling on the craft, rather than in a conventional manner of sitting or standing inside a motorboat.
- ~~27.~~ 30. "Possession" means control, actual possession, and constructive possession of the article or thing specified.
- ~~28.~~ 31. "Private fish hatchery" means a body of water, whether natural or artificial, and any other facilities used, maintained, or operated by any private person, firm, corporation, or limited liability company for the propagation and production of fish for sale or planting in other waters. Except in the case of trout, walleye, northern pike, and crappie, which may be raised in a private fish hatchery without the director's approval, the director may, by rule, regulate the species of fish which may be raised in a private fish hatchery. No waters stocked by any state or federal governmental agency may be considered a private fish hatchery.

- ~~29.~~ 32. "Public waters" means waters to which the general public has a right to access.
- ~~30.~~ 33. "Resident" means any person who has actually lived within this state or maintained that person's home therein for at least six months immediately preceding the date that residence is to be determined. A "nonresident" is any person who has not done so.
- ~~31.~~ 34. "Resident species" means any species nearly all of whose individuals in this state are located within this state for at least three-fourths of annual cycle of the species.
- ~~32.~~ 35. "Retrieve" means to have taken possession and made ready for transportation.
- ~~33.~~ 36. "Sell" and "sale" means any sale or offer to sell, or possession with intent to sell, use, or dispose of, the article or thing specified, contrary to law.
- ~~34.~~ 37. "Shooting preserve" or "preserve" means any privately owned or leased acreage [hectarage] on which hatchery-raised game birds are released to be hunted for a fee over an extended season.
- ~~35.~~ 38. "Sinkbox" or "sunken device" means a raft or any type of low floating device having a depression that affords a hunter a means of concealing that person below the surface of the water.
- ~~36.~~ 39. "Slow or no wake speed" means the slowest possible speed necessary to maintain steerage.
- ~~37.~~ 40. "Small game" includes all game birds and tree squirrels.
- ~~38.~~ 41. "Species" includes any subspecies of wildlife and any other group of wildlife of the same species or smaller tax in common spatial arrangement that interbreed when mature.
- ~~39.~~ 42. "Threatened species" means any species which is likely to become an endangered species within the foreseeable future and includes any species classified as threatened pursuant to the Endangered Species Act of 1973, Public Law 93-205.
- ~~40.~~ 43. "Undocumented vessel" means a vessel which does not have a valid marine document as a vessel of the United States.
- ~~41.~~ 44. "Vessel" means any watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
- ~~42.~~ 45. "Waterfowl" includes all varieties of geese, brant, swans, ducks, rails, and coots.
- ~~43.~~ 46. "Waters" when not qualified means waters not open to the general public.
- ~~44.~~ 47. "Waters of the state" means all waters of this state, including boundary waters. This title extends to and is in force and effect over, upon, and in all such waters.

- ~~45-~~ 48. "Wildlife" means any member of the animal kingdom including any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof. Wildlife does not include domestic animals as defined by section 36-01-00.1 or birds or animals held in private ownership.

⁹⁹ **SECTION 2. AMENDMENT.** Section 20.1-02-05 of the North Dakota Century Code is amended and reenacted as follows:

20.1-02-05. Powers of director. The director may:

1. Fix the salaries and the necessary travel and other expenses of department personnel subject to law and legislative appropriations.
2. Employ any part-time personnel necessary to run the director's office and remove the employees at will. Salaries and necessary traveling and other expenses of these appointees must be authorized, audited, and paid in the same manner as salaries and expenses of state officers.
3. Accept from any person, or gather, or purchase, fish, spawn, or fry, for distribution in state waters.
4. Take alive at any time, under the director's personal supervision or under the personal supervision of any of the director's bonded appointees, any birds or animals for propagation purposes or for exchange with other states and foreign countries for game birds and animals of other species.
5. Order additional protection for any fish with an open season when, after investigation, the director finds danger of extinction, undue depletion in any waters, or to aid in the propagation and protection of immature fish, by prescribing how, how many, where, and when the fish may be taken. The orders have the force of law.
6. Take or cause to be taken at any time from any state public waters any suckers, carp, or pickerel.
7. With the governor's approval, purchase, lease, or condemn real estate, when it is required to carry out this title, and sell it when it is no longer required, in the name of the state.
8. Lease up to ninety-nine years any department land, for the purpose of development and improvement, to any nonprofit corporation, upon consideration of specified improvements to be made by the corporation and other improvements the department and the corporation may agree upon. The lease must provide that all funds received by the corporation

⁹⁹ Section 20.1-02-05 was also amended by section 1 of House Bill No. 1224, chapter 196, section 1 of House Bill No. 1358, chapter 197, section 1 of Senate Bill No. 2237, chapter 194, and section 1 of Senate Bill No. 2322, chapter 195.

through lease of the property be expended upon the leased premises for development and improvements. The corporation has the authority, subject to approval by the director, to sublease the premises for cabin sites and other recreational purposes. Upon termination of the lease, the leased property, together with all improvements, reverts to the department.

9. With the governor's approval, enter ~~into~~ agreements with the bureau of reclamation for the management of lands in the Heart Butte area acquired by the bureau for the construction of dams on lakes or streams. Revenues derived from the management of these lands or received from any federal agency for expenditure upon these lands may not be commingled with other game and fish funds, but must be deposited by the director in a separate account. These funds are ~~hereby~~ appropriated for expenditure for purposes as may be agreed upon by the bureau of reclamation, the United States fish and wildlife service, the national park service, and the director. The authority ~~herein~~ granted by this subsection is effective only until the lands are resold to the former landowners by the bureau of reclamation.
10. Secure specimens of game birds, animals, and fish for breeding purposes by purchase or otherwise and by exchange with the game commissions or state game wardens of other states or countries.
11. Issue special permits to shoot wildlife from a stationary motor vehicle upon application from individuals who are physically unable to walk for purposes of hunting or taking wildlife or who have lost the use of an arm at or below the elbow. The application must be accompanied by a physician's statement verifying the person's condition, and if used to hunt on lands controlled by the board of university and school lands, must designate the land on which the individual intends to hunt. The permittee must have permission from the lessee and the commissioner of university and school lands to hunt on lands controlled by the board of university and school lands. A permit issued under this subsection allows the permittee to drive, or to be driven, onto any land for the purposes of hunting wildlife, except that neither any other passenger within the vehicle nor the driver, if someone other than the permittee, may be a hunter, unless the other person is also a permittee. Provided, however, that if the land is privately owned and if the permittee is not going to drive or be driven along an established road or trail, the permittee must first obtain the consent of the owner or lessee to hunt on the land in the manner provided in this title.
12. Issue to any ~~person~~ individual, who is a paraplegic or who has lost the use of one or both arms, a special permit to hunt game with a crossbow if that ~~person~~ individual otherwise complies with and qualifies under the licensing and other provisions of this title.
13. Issue any resident license prescribed by this title to ~~a person~~ an individual who has come to the state with a bona fide intention of becoming a resident, even though that ~~person~~ individual has not been a resident of this state for the required time period immediately preceding the application for the license, or to any ~~person~~ individual who is a member of the United States armed forces and who is within the state on duty or leave, or to any employee of the United States fish and wildlife service or the conservation department of any state or province

of Canada in the state to advise or consult with the department. No license may be issued under this subsection unless an affidavit of a bona fide resident, setting forth the actual conditions, accompanies the application. This subsection does not apply to lottery permits, except that the director shall issue a resident deer hunting license to any resident of this state who is a member of the United States armed forces stationed outside this state and who shows proof of North Dakota residence and who pays the appropriate licensing fee. A deer license issued to a member of the United States armed forces under this subsection must be issued without being subject to the lottery for deer hunting licenses.

14. Adopt rules, and issue permits for the transporting or introducing of fish, fish eggs, small game, big game, or fur-bearers after determining that the fish, fish eggs, birds, or animals have been properly inspected for disease, and that the transplanting or introduction will be in compliance with state laws and rules. No person may transplant or introduce any fish or fish eggs into any of the public waters of this state, or transplant or introduce any species of small game, big game, or fur-bearers into this state without obtaining a permit from the director.
15. Pursuant to section 4-01-17.1, cooperate with the agriculture commissioner, the United States fish and wildlife service, and other agencies in the destruction of predatory animals, destructive birds, and injurious field rodents. The director ~~is hereby authorized to~~ may adopt rules in accordance with organized and systematic plans of the department of the interior for the destruction of these birds and animals. The director may determine the necessity and issue permits and rules and regulations therefor for the operation and use of private aircraft to assist in the destruction of the above birds and animals and aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.
16. Exercise authority to establish programs and rules and administer state and federal funds provided to the state for the preservation and management of resident species determined by the director to be threatened or endangered species of wildlife. The authority exercised must be in compliance with the Endangered Species Act of 1973, Public Law 93-205. Any person who violates rules ~~established~~ adopted under this subsection is guilty of a class B misdemeanor.
17. ~~Subject to chapter 28-32, adopt rules for the licensing of guides or outfitters and may require records and reports as the director determines necessary. The director may, after due hearing as provided in chapter 28-32, revoke or refuse to renew the license of a person who violates the rules or fails to provide the records and reports.~~
- ~~48.~~ Provide for the funding of a private land habitat and access improvement program with moneys derived from the interest earned on the game and fish fund and habitat restoration stamp fees. The director shall place these funds in a special fund called the "game and fish department private land habitat and access improvement fund".
- ~~49.~~ 18. Carry out a private land habitat and access improvement program by:

- a. Entering ~~into~~ cost-sharing, habitat enhancement, and access agreements with landowners or agencies working on private land to help defray all or a portion of their share of local, state, or federally sponsored conservation practices considered beneficial to fish and wildlife.
 - b. Leasing and developing fish and wildlife habitat or sport fishing areas on private land. Public access to leased land may not be prohibited.
 - c. Carrying out practices that will alleviate depredations caused by predatory animals and big game animals.
 - d. Publishing a brochure on an annual basis describing areas funded from the game and fish department private land habitat and access improvement fund which are open to public access in this state.
 - e. Receiving advice from the game and fish advisory board concerning expenditures from the game and fish private land habitat and access improvement fund.
- ~~20.~~ 19. Subject to prior approval of the attorney general, lease or exchange lands under the director's jurisdiction or control which are deemed necessary for the improved management of wildlife resources.
- ~~21.~~ 20. Subject to prior approval of the attorney general, impose any conditions or reservations to the leases or exchanges as the director determines necessary.
- ~~22.~~ 21. Adopt rules and issue permits for conducting fishing contests involving public waters of the state. The director by rule shall define the term "fishing contest" and shall set criteria for which a fishing contest permit is required. The director may deny permits. No person may conduct a fishing contest on public waters without first receiving a permit issued by the director.
- ~~23.~~ 22. Issue duplicates of lost or destroyed game and fish licenses or permits. The procedure for reissuing the licenses or permits and fees to be charged must be prescribed by the director by rule.
- ~~24.~~ 23. Establish noncriminal penalties for any rules adopted by the director. The maximum noncriminal penalty that may be set by the director is a fine of two hundred fifty dollars. Violation of any rule not designated as having a noncriminal penalty is considered a criminal violation as established in the appropriate chapter of this title.
- ~~25.~~ 24. Issue, as a means of encouraging and promoting economic development in this state, complimentary fishing licenses to nonresident visiting dignitaries. The circumstances and conditions of complimentary fishing licenses issued must be determined by the director. The number of complimentary licenses may not exceed fifty licenses per year. The director shall determine the visiting dignitaries to be of national or international stature before they are eligible for complimentary licenses.
- ~~26.~~ 25. Carry out a coyote depredation prevention program by conducting practices that will alleviate depredations caused by coyotes.

- ~~27.~~ 26. Issue, as a means of rewarding dedication to teaching firearm hunter safety, complimentary lifetime resident certificates ~~provided under subsection 53 of section 20.1-03-12~~ and combination licenses provided under section 20.1-03-11.1 to resident certified hunter education volunteer instructors. Eligible persons must have served as a lead or assistant certified hunter education volunteer instructor in this state for a minimum of one course in each of thirty years. The license is known as the "lifetime combination license" and must be signed by the director and the person receiving the license. The license must be revoked by the director if the license holder is convicted of a felony or found to have violated any provision of this title.

¹⁰⁰ **SECTION 3. AMENDMENT.** Section 20.1-03-07.1 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-07.1. Nonresident waterfowl hunting license required. Except as provided in sections 20.1-03-07.2 and 20.1-03-07.3, a nonresident may not hunt waterfowl unless that ~~person~~ individual first obtains a nonresident waterfowl hunting license, in addition to a nonresident small game hunting license. The nonresident waterfowl hunting license entitles the nonresident to hunt waterfowl for any period of fourteen consecutive days, ~~any period of seven 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 one 7-day hunting period allows hunting statewide.~~ A license authorizing two 7-day hunting periods allows hunting in a specified zone during each period. 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.

SECTION 4. AMENDMENT. Section 20.1-03-11.2 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-11.2. Certified guides and Hunting outfitters - White-tailed deer licenses - Fees. The governor shall make one-half of the antlered white-tailed deer licenses and permits allocated to nonresidents under subsection 4 of section 20.1-03-11, up to a maximum of one hundred licenses, available to ~~certified guides or hunting outfitters~~ certified guides or hunting outfitters licensed in this state. A ~~certified guide or hunting outfitter~~ certified guide or hunting outfitter may not purchase or obtain more than five white-tailed deer licenses under this section in any one year. A ~~certified guide or hunting outfitter~~ certified guide or hunting outfitter shall pay the fee required for a white-tailed deer license sold to ~~guides or outfitters~~ guides or outfitters and provided by them to nonresidents for each license purchased under this section. A ~~certified guide or hunting outfitter~~ certified guide or hunting outfitter may provide to nonresidents, for compensation, big game guiding and outfitting services and one white-tailed deer license per nonresident as provided in this section to hunt white-tailed deer in the manner, at the places, and during the times the governor prescribes by proclamation.

¹⁰⁰ Section 20.1-03-07.1 was also amended by section 3 of House Bill No. 1358, chapter 197, section 1 of Senate Bill No. 2242, chapter 198, and section 2 of Senate Bill No. 2322, chapter 195.

¹⁰¹ **SECTION 5. 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, seventy-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. For a nonresident big game hunting license, one hundred fifty-five dollars, and for a nonresident bow license, one hundred fifty-five 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.
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, twenty-five dollars.
8. For a nonresident short-term seven-day fishing license, fifteen dollars.
9. For a resident husband and wife fishing license, fourteen dollars.
10. For a nonresident nongame hunting license, fifteen dollars.
11. For a 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.
14. 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.

¹⁰¹ Section 20.1-03-12 was also amended by section 4 of House Bill No. 1358, chapter 197, section 5 of House Bill No. 1358, chapter 197, section 1 of House Bill No. 1391, chapter 201, and section 2 of Senate Bill No. 2363, chapter 200.

15. 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.
16. For a license to a resident traveling agent, buyer, or shipper of green furs, twenty dollars.
17. For an annual license to practice taxidermy, twenty-five dollars.
18. 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.
19. For a permit to make collections of protected birds and animals for scientific purposes, ten dollars.
20. 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.
21. 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. 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. For a license to erect, have, and maintain on the ice in this state a fishhouse used or to be used to protect one while ice fishing or a dark house used or to be used for spearfishing, ten dollars for each unit.
24. For a resident paddlefish tag annual license, three dollars per tag.
25. For a nonresident paddlefish tag annual license, seven dollars and fifty cents per tag.

26. For an annual resident license to sell minnows or other live bait at wholesale, thirty dollars.
27. 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.
28. For an annual license to operate a private fish hatchery, seventy-five dollars.
29. For a resident commercial frog license, fifty dollars.
30. For a nonresident commercial frog license, two hundred dollars.
31. For a resident frog license, three dollars.
32. For a resident husband and wife frog license, five dollars.
33. For a shooting preserve operating permit:
 - a. One hundred dollars, if the shooting preserve consists of an area of six hundred forty acres [259 hectares] or less; or
 - b. One hundred dollars, if the shooting preserve consists of an area of more than six hundred forty acres [259 hectares], plus fifty cents per acre [.40 hectare] for each acre [.40 hectare] over six hundred forty acres [259 hectares].
- ~~34.~~ 35. For an annual license to guide for both hunting and fishing, one hundred fifty dollars.
- ~~35.~~ For an annual license to guide only for hunting, one hundred dollars.
- ~~36.~~ For an annual license to guide only for fishing, one hundred dollars.
- ~~37.~~ For a nonresident waterfowl hunting license, ten dollars.
- ~~38.~~ 35. For a nonresident husband and wife fishing license, thirty-five dollars.
- ~~39.~~ 36. For a nonresident short-term three-day fishing license, ten dollars.
- ~~40.~~ 37. For a nonresident fur-bearer and nongame hunting license, twenty-five dollars.
- ~~41.~~ 38. For a combination license, twenty-seven dollars.
- ~~42.~~ 39. For a white-tailed deer license sold to ~~certified guides or~~ hunting outfitters and provided by them to nonresidents, two hundred fifty dollars.
- ~~43.~~ 40. For a resident swan license, five dollars.
- ~~44.~~ 41. For a nonresident swan license, twenty-five dollars.
- ~~45.~~ 42. For a resident and nonresident sandhill crane license, five dollars.
- ~~46.~~ 43. For a resident commercial clam license, one hundred dollars.

47. ~~44.~~ For a nonresident commercial clam license, one thousand dollars.
48. ~~45.~~ 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.
49. ~~46.~~ For an annual nonresident license to sell minnows or other live bait at wholesale, two hundred dollars.
50. ~~47.~~ For a bighorn sheep license issued to a nonresident, five hundred dollars.
51. ~~48.~~ For a nonresident reciprocal trapping license, two hundred fifty dollars.
52. ~~49.~~ For a nonresident spring white goose license, fifty dollars.
53. ~~50.~~ 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.

The fees for these licenses and permits, except for motorboat license fees, must be deposited with the state treasurer and credited to the game and fish fund.

SECTION 6. AMENDMENT. Section 20.1-03-36 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-36. Certified guides Guides and outfitters - Requirements to be licensed. ~~An individual may not be issued a certified guide license without first providing the director:~~

1. ~~Proof that the individual is covered by general liability insurance against loss or expense due to accident or injury from guiding or outfitting services, at a minimum of one hundred thousand dollars per individual and three hundred thousand dollars per incident;~~
2. ~~Proof that the individual is currently certified in adult cardiopulmonary resuscitation or its equivalent; and~~
3. ~~Proof that the individual is currently certified in standard first aid or its equivalent.~~ An individual may not act as a guide or outfitter or advertise or otherwise represent to the public as a guide or outfitter without first securing a license in accordance with this chapter and the rules of the director.

SECTION 7. Section 20.1-03-36.1 of the North Dakota Century Code is created and enacted as follows:

20.1-03-36.1. Fee for license.

1. The annual fee to receive a hunting guide license is one hundred dollars for a resident and four hundred dollars for a nonresident.
2. The annual fee to receive a fishing outfitter license is one hundred dollars for a resident and four hundred dollars for a nonresident. The annual fee to receive a fishing outfitter license is fifty dollars for a resident and two hundred dollars for a nonresident if the individual

applying for the license has paid for a hunting guide or outfitter license for the same year.

3. The annual fee for a resident to receive a hunting outfitter license is two hundred fifty dollars for under ten thousand acres [4046.86 hectares] and five hundred dollars for ten thousand acres [4046.86 hectares] and over on which the outfitter provides services. The annual fee for a nonresident to receive a hunting outfitter license is two thousand dollars. The acreage must be presented by the county with a list of lessors by county in every application for outfitter licensure. The annual permit fee for day leasing is two hundred dollars. The acreage day leased by county for the preceding year must be provided to receive a day leasing permit.
4. A license is not required for a person to provide services on real property that person owns or leases for the primary pursuit of bona fide agricultural interests or for a nonprofit organization registered with the secretary of state. The director shall determine the number of acres by county exempted from licensure by this subsection and shall publish the results. The director shall provide written information to the public on the possible liability exposure for outfitting under this subsection and on the benefits of liability insurance and proper training.

SECTION 8. Section 20.1-03-36.2 of the North Dakota Century Code is created and enacted as follows:

20.1-03-36.2. Licenses.

1. Each licensee shall carry the license while afield and show the license to any law enforcement officer upon request.
2. Hunting guide and fishing outfitter licenses are not transferable.
3. Guide and outfitter licenses expire on December thirty-first of each year unless revoked at earlier date.
4. The department shall deposit in the game and fish department private habitat and access improvement fund any funds collected under section 20.1-03-36.1 or this section from hunting guides and outfitters which are not used for the administration of this chapter.

SECTION 9. AMENDMENT. Section 20.1-03-37 of the North Dakota Century Code is amended and reenacted as follows:

20.1-03-37. Guides and outfitters - Rules - Restrictions License qualifications.

1. An individual ~~may not:~~
4. ~~Act as a guide or outfitter or advertise or otherwise represent to the public that the individual is a guide or outfitter without first securing a license in accordance with this title and the applicable rules of the director;~~

- ~~2. Act as a certified guide or outfitter or advertise or otherwise represent to the public that the individual meets the qualifications of being certified without first complying with section 20.1-03-36;~~
- ~~3. Act as a hunting guide or outfitter on land owned by or private land enrolled by the department for the purpose of hunting;~~
- ~~4. Provide guiding or outfitting services to a person who has not obtained the appropriate license for the species sought by that person; or~~
- ~~5. Willfully and substantially misrepresent that person's facilities, prices, equipment, services, or hunting or fishing opportunities as a guide or outfitter who is eighteen years of age or more may apply for a guide or outfitter license.~~
2. An applicant for a hunting guide license and an outfitter acting as a guide shall provide the director proof that the individual is certified in adult cardiopulmonary resuscitation or its equivalent and in standard or first aid or its equivalent.
3. An applicant for a hunting outfitter or fishing outfitter license shall provide to the director proof that the individual and the individual's business operation are covered by general liability insurance against loss or expense due to accident or injury from outfitting services, at a minimum of one hundred thousand dollars per individual and three hundred thousand dollars per accident.
4. An individual must hold a hunting guide license for two years to be eligible to apply for a hunting outfitter license.
5. The director may not issue a license to an individual who been convicted of a state or federal criminal game or fish violation in the last three years or whose license to hunt or fish is under suspension or revocation. As used in this chapter, "conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of nolo contendere, a judgment of conviction even though the court suspended execution of a sentence in accordance with subsection 3 of section 12.1-32-02, or a deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or an equivalent statute. The term does not include a finding of guilt which is reversed on appeal.
6. If an application is for a business association, the applicant must be an agent of the association to be held personally responsible for the conduct of the licensed outfitter's operations, in addition to the association.
7. An applicant for a hunting guide license must have legally hunted for part of each of any three years in a manner directly contributing to the individual's experience and competency as a guide.

SECTION 10. Section 20.1-03-38 of the North Dakota Century Code is created and enacted as follows:

20.1-03-38. Licensing by the department.

1. The director may license guides and outfitters and may adopt rules to regulate guides and outfitters. If the director requests a trade secret or proprietary information, the director shall request the information on a separate form, and that information is confidential and is not a public record subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. The director may release this information, however, if it is aggregated so as not to identify any guide, outfitter, or client. Before engaging in rulemaking activities with respect to guides and outfitters, the director shall appoint a committee composed of guides, outfitters, and interested individuals and shall consult with the committee when preparing rules.
2. The director shall periodically inspect or cause to be inspected all outfitter businesses. All records, facilities, and equipment kept or used by the outfitter are open to inspection by the director or a game warden.
3. The director shall perform a background search for criminal and game and fish violations on each applicant on initial application and on each renewal.
4. The director may not issue a license to an individual to be a hunting guide or hunting outfitter unless the individual is proficient in the application of state and federal laws on the hunting of wild game. The director shall create and administer a written examination to test proficiency of hunting guides and outfitters in these laws. The director shall administer examinations at least twice a year; however, an examination may not be given within ninety days after the previous examination.

SECTION 11. Section 20.1-03-39 of the North Dakota Century Code is created and enacted as follows:

20.1-03-39. Restrictions - Administrative sanctions.

1. The license of a guide or outfitter may be denied, revoked, or suspended, or placed on probation by the director if:
 - a. The licensee, while carrying out the business of guiding or outfitting, engages in conduct detrimental to the image and professional integrity of the guiding and outfitting industry;
 - b. The licensee willfully and substantially misrepresented that person's facilities, prices, equipment, services, or hunting or fishing opportunities as a guide or outfitter;
 - c. The licensee has been convicted of an offense not listed in subsection 2 which is determined by the director to have a direct bearing on the licensee's ability to serve the public as a guide or outfitter;
 - d. The licensee is addicted to the use of intoxicating liquors, narcotics, or stimulants to the extent the licensee's performance of professional duties is affected; or

- e. The licensee has become not qualified, or has violated any rule for the licensing of a guide or outfitter by the director.
2. The license of a guide or outfitter may be revoked if:
 - a. The licensee is convicted of violating state or federal criminal law pertaining to hunting, fishing, or trapping;
 - b. The licensee acted as a hunting guide or hunting outfitter on land owned or private land enrolled by the department for the purposes of hunting or on land for which the department pays in lieu of tax payments; or
 - c. The licensee provided guiding or outfitting services to a person that had not obtained the appropriate license for the species sought by that person.
 3. For the purpose of administrative sanctions, an outfitter is liable if a guide intentionally violates a state or federal criminal law pertaining to hunting, fishing, or trapping if the outfitter knowingly aids in the violation or knows of the violation but fails to report the violation to the department within a reasonable time. A guide is liable if a client violates a state or federal criminal law pertaining to hunting, fishing, or trapping if the guide knowingly aids in the violation or knows of the violation and the guide or client fail to report the violation to the department within a reasonable time.
 4. Notwithstanding chapters 45-11 and 47-25, another person may not use a name, business name, fictitious name, trade name, internet address, world wide web uniform resource identifier, place of business, or telephone number of an outfitter who has been convicted of a violation at least three years from the time of the conviction except on permission from the director after a determination by the director that the new business is significantly separate from the previous business.

SECTION 12. Section 20.1-03-40 of the North Dakota Century Code is created and enacted as follows:

20.1-03-40. Penalty. Any individual providing guide or outfitter services without a license is guilty of a class B misdemeanor. Each client guided is subject to separate and distinct offenses. In addition to this penalty, the director may initiate civil action in a court of competent jurisdiction as necessary to enforce this chapter or any rule adopted under this chapter, including an injunction to restrain a violation, without proof of actual damages sustained by any person. Any individual guiding or outfitting while under suspension, revocation, or denial is guilty of a class A misdemeanor. Any individual who commits for remuneration or compensation an act of fraud involving hunting or fishing or any individual who illegally takes or causes death to fish or wildlife for remuneration or compensation may be prosecuted for theft, fraud, or conspiracy under title 12.1 and is, upon conviction, liable for the higher amount between the actual compensation received or the value of the fish or wildlife illegally taken or killed.

SECTION 13. APPLICATION - EFFECTIVE DATE. Licenses issued by the director under section 20.1-02-05 are valid for the term of issuance and an individual with this license is entitled to a one-time irrevocable decision to be an outfitter before the term of the license ends regardless of any experience requirement in this Act.

Approved April 23, 2003

Filed April 23, 2003

CHAPTER 203**HOUSE BILL NO. 1223**

(Representative Porter)
(Senators Cook, Trenbeath)

PHEASANT HUNTING

AN ACT to create and enact a new section to chapter 20.1-04 and a new section to chapter 20.1-08 of the North Dakota Century Code, relating to the opening date of pheasant season and the hunting of pheasants on certain lands in the state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 20.1-04 of the North Dakota Century Code is created and enacted as follows:

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. A new section to chapter 20.1-08 of the North Dakota Century Code is created and enacted as follows:

Small game proclamation - Pheasants. The governor, in the governor's proclamation, shall prohibit a nonresident from hunting for the first seven days of the pheasant season on land owned or private land enrolled by the department for the purposes of hunting or on land for which the department pays in lieu of tax payments.

Approved April 18, 2003

Filed April 18, 2003

CHAPTER 204

SENATE BILL NO. 2215

(Senators Wardner, Fischer)
(Representatives Hanson, F. Klein)

MOOSE AND ELK LICENSE RAFFLES

AN ACT to amend and reenact subsections 7 and 8 of section 20.1-03-11 and sections 20.1-08-04.2 and 20.1-08-04.6 of the North Dakota Century Code, relating to the moose and elk hunting license raffles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰² **SECTION 1. AMENDMENT.** Subsections 7 and 8 of section 20.1-03-11 of the North Dakota Century Code are amended and reenacted as follows:

7. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a resident who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt elk upon filing a signed application describing that land and payment of the fee requirement for a resident big game license. The land must be within a unit open for the hunting of elk. The license must include a legal description of the eligible land described in the completed application and may be used to hunt elk within the district or unit in which the land described in the completed application is located. Upon request, a lessee shall provide proof that the land described in the completed application is leased for agricultural purposes. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land. A resident transferring eligibility under this subsection is not eligible to apply for a license to hunt elk in future years but is eligible to participate in the ~~rocky mountain elk foundation~~ raffle under section 20.1-08-04.6. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. The governor's proclamation may restrict the districts or units for which preferential licenses may be issued under this subsection. However, the governor shall give primary consideration to allowing preferential licenses under this subsection to be issued to persons owning or leasing land in the following areas: that portion of township one hundred forty-seven north, range ninety-five west which is north and west of state highway 22; township one hundred forty-six north, range ninety-six west; township one hundred forty-seven north, range ninety-six west; township one hundred forty-eight north, range ninety-six west; township one hundred forty-six north, range ninety-seven west; township one hundred forty-seven north, range ninety-seven west;

¹⁰² Section 20.1-03-11 was also amended by section 1 of House Bill No. 1380, chapter 199, and section 1 of Senate Bill No. 2363, chapter 200.

township one hundred forty-eight north, range ninety-seven west of the fifth principal meridian, in Dunn County; the west one-half of township one hundred forty-nine north, range ninety-five west; township one hundred forty-nine north, range ninety-six west, and township one hundred forty-nine north, range ninety-seven west of the fifth principal meridian, in McKenzie County; and other areas within a district or unit open for hunting of elk as prescribed in the governor's proclamation. The number of licenses issued under this subsection for each designated district or unit for hunting elk may not exceed fifteen percent of the total licenses prescribed in the governor's proclamation for each district or unit. If the number of applications for licenses to be issued under this subsection in a district or unit exceeds the maximum number of such licenses allocated to that district or unit, the licenses to be issued must be issued by lottery as prescribed in the governor's proclamation. A person who receives a license under this subsection is not eligible to apply for a license to hunt elk in future years but is eligible to participate in the ~~rocky mountain elk foundation~~ raffle under section 20.1-08-04.6. Notwithstanding this subsection, if a person other than the transferee of license eligibility is unsuccessful in harvesting an elk under this subsection, that person may return the unused license to the department and is eligible to apply for, but not transfer, a one-time additional license to hunt elk in future years. A person who receives a second license under this subsection is not eligible to participate in the ~~rocky mountain elk foundation~~ raffle under section 20.1-08-04.6. Licenses to hunt elk may not be issued under this subsection when the total number of licenses prescribed in the governor's proclamation is less than twenty. If a person receives a license under this subsection, the person's spouse, children, and parents living with the person are not eligible to receive a license under this subsection for the district or unit in which the land described in the completed application is located, unless the person has sold or otherwise transferred the person's rights to the land described in the completed application. The director may issue special elk depredation management licenses to landowners in designated areas around Theodore Roosevelt national park upon payment of the fee requirement for a resident big game license. The provisions of this section governing the number of licenses issued for each designated district or unit for hunting elk do not apply to special elk depredation management licenses and a person who receives such a license under this subsection is eligible to apply for a license to hunt elk in future years and is eligible to participate in the ~~rocky mountain elk foundation~~ raffle under section 20.1-08-04.6.

8. A resident who has executed a lease for at least one hundred sixty acres [64.75 hectares] of land and who actively farms or ranches that land or a resident who holds title to at least one hundred sixty acres [64.75 hectares] of land is eligible to apply for a license to hunt moose without charge upon filing a signed application describing that land. The land must be within a unit open for the hunting of moose. The license must include a legal description of the eligible land described in the completed application and may be used to hunt moose only upon that land. Upon request, a lessee shall provide proof that the land described in the completed application is leased for agricultural purposes. A resident who is eligible for a license under this subsection may transfer that eligibility for the license to a spouse or a legal dependent residing customarily with the resident, but no more than one license may be issued under this subsection for any qualifying land. A

resident transferring eligibility under this subsection is not eligible to apply for a license to hunt moose in future years but is eligible to participate in the ~~North Dakota game warden association~~ raffle under section 20.1-08-04.2. If not otherwise specified in an agricultural lease, the landowner is entitled to receive the license. The number of licenses issued under this subsection for a district or unit may not exceed fifteen percent of the total licenses prescribed in the governor's proclamation for that district or unit. If the number of eligible persons who apply for a license under this subsection exceeds the number of licenses available under this subsection, the licenses must be issued by lottery as prescribed in the governor's proclamation. A person who receives a license under this subsection and who is successful in harvesting a moose is not eligible to apply for a license to hunt moose in future years but is eligible to participate in the ~~North Dakota game warden association~~ raffle under section 20.1-08-04.2. Notwithstanding this subsection, if a person other than the transferee of license eligibility is unsuccessful in harvesting a moose under this subsection, that person may return the unused license to the department and is eligible to apply for, but not transfer, an additional license to hunt moose in future years. A person who receives a second license under this subsection is not eligible to participate in the ~~North Dakota game warden association~~ raffle under section 20.1-08-04.2. If a person receives a license under this subsection, the person's spouse, children, and parents living with the person are not eligible to receive a license under this subsection for the district or unit in which the land described in the completed application is located, unless the person has sold or otherwise transferred the person's rights to the land described in the completed application. The governor's proclamation may restrict the area of land within a unit open for the hunting of moose for which a preferential license is issued under this subsection. If the proclamation restricts the area for issuance of preferential licenses, an applicant must own or lease land within the restricted area to be eligible to apply for a license to hunt moose upon payment of the fee required for a resident big game license. The license may be used to hunt moose within the entire unit in which the land described in the completed application is located. A successful applicant from a restricted area may not return an unused license to regain eligibility for a license to hunt moose in future years.

SECTION 2. AMENDMENT. Section 20.1-08-04.2 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.2. Governor's proclamation concerning the hunting of moose - ~~North Dakota game warden association raffle~~ Raffle. The governor may by proclamation provide for a season to hunt moose in a manner, number, places, and times as the governor prescribes. Licenses to hunt moose must be issued by lottery, except as provided under subsection 8 of section 20.1-03-11, with only residents eligible to apply; however, the governor may by proclamation make available to the ~~North Dakota game warden association~~ American wildlife enforcement memorial museum and educational center and the rocky mountain elk foundation one license per year to hunt moose in a manner, places, and times as the governor prescribes. The ~~North Dakota game warden association~~ American wildlife enforcement memorial museum and educational center and the rocky mountain elk foundation shall hold a raffle under rules adopted by the director with residents and nonresidents eligible to participate. The person who receives the license from the raffle may not transfer the license. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle. ~~Fifteen~~ Fifty percent of all net

proceeds must be ~~remitted to the department and used for moose elk management and or other wildlife and in conservation related projects in this state as described under rocky mountain elk foundation policies and objectives.~~ All remaining net proceeds must be used for construction and maintenance of the North American wildlife enforcement ~~officers association game warden museum memorial museum and educational center~~ located at the international peace garden. ~~The governor may not make more than a total of ten licenses available to the North Dakota game warden association under this section~~ The North American wildlife enforcement memorial museum and educational center and the rocky mountain elk foundation shall submit reports concerning the raffle as the director requires. A person may only receive one license to hunt moose issued by lottery ~~and one license to hunt moose through the North Dakota game warden association raffle~~ in a lifetime.

¹⁰³ **SECTION 3. AMENDMENT.** Section 20.1-08-04.6 of the North Dakota Century Code is amended and reenacted as follows:

20.1-08-04.6. Governor's proclamation concerning the hunting of elk - Rocky mountain elk foundation raffle. The governor may by proclamation provide for a season to hunt elk in a manner, number, places, and times as the governor prescribes. Licenses to hunt elk must be issued by lottery, except as provided under subsection 7 of section 20.1-03-11, with only residents eligible to apply; however, the governor may by proclamation make available to the rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center a license to hunt elk in a manner, places, and times as the governor prescribes. The rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center shall hold a raffle under rules adopted by the ~~commissioner~~ director with ~~only~~ residents and nonresidents eligible to participate. No more than ten percent of the gross proceeds of the raffle may be used to promote the raffle and fifty percent of all net proceeds must be used for elk management and or other wildlife and conservation related projects in North Dakota as described under rocky mountain elk foundation policies and objectives and all remaining net proceeds must be used for construction and maintenance of the North American wildlife enforcement memorial museum and educational center located at the international peace garden. The rocky mountain elk foundation and the North American wildlife enforcement memorial museum and educational center shall submit reports concerning the raffle as the ~~commissioner~~ director requires. Except for landowners who receive special elk depredation management licenses issued to landowners under subsection 7 of section 20.1-03-11 and persons who receive a special elk depredation management license issued by lottery under this section, a person may only receive one license to hunt elk issued by lottery ~~and one nontransferable license to hunt elk through the rocky mountain elk foundation raffle~~ in a lifetime.

Approved April 8, 2003
Filed April 9, 2003

¹⁰³ Section 20.1-08-04.6 was also amended by section 14 of Senate Bill No. 2046, chapter 48.

CHAPTER 205**HOUSE BILL NO. 1122**

(Representative Keiser)

MULE DEER 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 mule deer license raffle and auction.

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 mule deer - Mule deer foundation raffle and auction. By proclamation, the governor may make available to the mule deer foundation one license per year to hunt mule deer in the manner, places, and times as the governor prescribes. The mule deer foundation shall hold a raffle or by proclamation the governor may auction to the highest bidder, whether resident or nonresident, a license to hunt mule deer in the manner, places, and times the governor prescribes. If an individual receives a mule deer license through the raffle or the auction, the individual is not eligible to apply for a mule deer 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 and all net proceeds of the raffle and all proceeds of the auction must be used for mule deer management and related projects in North Dakota. The mule deer foundation shall submit reports concerning the raffle as the director requires.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 206**SENATE BILL NO. 2323**

(Senators Traynor, Freborg, Heitkamp)
(Representatives Nelson, Pollert)

CHRONIC WASTING DISEASE

AN ACT to create and enact two new sections to chapter 20.1-08 of the North Dakota Century Code, relating to the governor's authority to restrict cervidae carcass imports due to chronic wasting disease and the governor's authority to declare an animal health emergency; and to declare an emergency.

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 restrictions on cervidae carcass importation due to chronic wasting disease. The governor, through proclamation or executive order, may restrict the importation and disposition of the carcass or carcass parts of any animal in the family cervidae taken from any areas within states or provinces that have documented cases of chronic wasting disease in wild populations or taken from captive hunt or farm facilities.

SECTION 2. A new section to chapter 20.1-08 of the North Dakota Century Code is created and enacted as follows:

Governor's executive order or proclamation declaring animal health emergency. In accordance with chapter 37-17.1, the governor may declare an animal health emergency upon determining that the wildlife of this state are at risk from diseases imported by foreign animals, a foreign animal disease, bioterrorism event, or an emerging animal disease. Upon the declaration of an animal health emergency the governor, after consultation with the state veterinarian or board of animal health, may order the sampling, destruction, and disposition of wildlife populations, as the governor deems necessary to abate the animal health emergency.

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

Approved April 11, 2003
Filed April 14, 2003

GOVERNMENTAL FINANCE

CHAPTER 207

HOUSE BILL NO. 1374

(Representatives Wald, Clark, Nicholas)
(Senators Espegard, Klein)

EXCESS DEPOSIT INSURANCE COVERAGE

AN ACT to amend and reenact section 21-04-09 of the North Dakota Century Code, relating to security for the repayment of deposits of public funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 21-04-09 of the North Dakota Century Code is amended and reenacted as follows:

21-04-09. Pledge of security in place of depository bond. The board of any public corporation may accept from any financial institution, as security for repayment of deposits, a pledge of securities in lieu of a personal or surety bond. When securities are so pledged to the board of any public corporation, the board shall require security in the amount of one hundred ten dollars for every one hundred dollars of public deposits. Securities that are eligible for the pledge are bills, notes, or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, irrevocable standby letters of credit issued by federal home loan banks of a rating of AA or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, federal land bank bonds, bonds, notes, warrants, certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, letters of credit issued by the Bank of North Dakota, and all other forms of securities issued by the state of North Dakota, its boards, agencies, or instrumentalities, or by any county, city, township, school district, park district, or other political subdivision of the state of North Dakota, whether payable from special revenues or supported by the full faith and credit of the issuing body, and bonds issued by any other state of the United States or such other securities approved by the banking board. The securities and securities sold under agreements to repurchase as described in section 21-06-07 must be delivered to and held for safekeeping by any financial institution, other than the depository, which the depository and the public corporation may agree upon. Whenever any securities are so deposited for safekeeping with any custodian, the custodian shall issue a receipt therefor jointly to the depository and the public corporation.

Any financial institution pledging securities, at any time it deems it advisable or desirable, and without the consent of the board of the public corporation, may substitute other eligible securities for all or any part of the securities pledged. The securities substituted must, at the time of the substitution, have a market value at least equal to the market value of the securities released and delivered to the depository.

In the event of the substitution the holder or custodian of the pledged securities shall, on the same day, forward by registered mail to the public corporation and the depository financial institution a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository financial institution.

A depository financial institution may fulfill the pledge of securities requirements of this section by maintaining a security pledge schedule that establishes the following:

1. The names of all public bodies maintaining deposits with the financial institution.
2. The amount of each deposit maintained by each public body.
3. The amount of federal deposit insurance corporation insurance applied to each account.
4. The net deposits exceeding federal deposit insurance corporation coverage for each account.
5. The amount of net deposit exceeding federal deposit insurance corporation deposit insurance multiplied by one hundred ten percent for each account.
6. The amount of securities needed to be pledged to fulfill the requirements of this section.
7. The total number of qualified securities pledged by the financial institution under the requirements of this section.

A financial institution is in compliance with this section as long as the security pledge schedule discloses the total qualified securities pledged in excess of the total pledges needed for a total amount of deposits maintained by all the public bodies with the financial institution as verified by the custodian of the securities every three months and copies thereof are provided to the custodian of the securities and to each of the public corporations maintaining deposits with the financial institution.

No pledge of security or bond may be required for any funds deposited with a financial institution to the extent that the deposits are insured by the federal deposit insurance corporation or the national credit union administration or an insurance company that is qualified to offer excess deposit insurance in this state and which has a rating of A- or better by A.M. Best Company Inc., or the equivalent rating by another recognized rating organization as determined by the insurance commissioner.

Approved March 25, 2003

Filed March 25, 2003

HEALTH AND SAFETY

CHAPTER 208

HOUSE BILL NO. 1123

(Human Services Committee)

(At the request of the State Department of Health)

DEPUTY STATE HEALTH OFFICER APPOINTMENT

AN ACT to amend and reenact section 23-01-08 of the North Dakota Century Code, relating to authority of the state health officer to appoint a deputy state health officer; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-08 of the North Dakota Century Code is amended and reenacted as follows:

23-01-08. Directors of divisions - Deputy - Appointment, salary, duties.

The state health officer shall appoint directors of the various divisions of the department and shall determine the salary, within the limits of legislative appropriations to the department and in conformity with the state merit system, to be received by such persons. The duties of such director must be those prescribed by the state health officer. The state health officer may appoint a deputy state health officer. A deputy state health officer who does not hold a health-related degree may not individually issue an order regarding public health unless the order is cosigned by a physician who is employed by the department or cosigned by the state epidemiologist. The deputy state health officer serves at the pleasure of the state health officer.

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

Approved April 18, 2003

Filed April 18, 2003

CHAPTER 209

HOUSE BILL NO. 1481

(Representatives Severson, Devlin, Froseth)
(Senator Espegard)

DEATH CERTIFICATE SIGNING

AN ACT to amend and reenact subsections 4 and 6 of section 23-02.1-19 and subsections 3 and 5 of section 23-02.1-20 of the North Dakota Century Code, relating to the signing of death certificates by a nurse practitioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰⁴ **SECTION 1. AMENDMENT.** Subsections 4 and 6 of section 23-02.1-19 of the North Dakota Century Code are amended and reenacted as follows:

4. The medical certification must be completed and signed 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.
6. 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.

SECTION 2. AMENDMENT. Subsections 3 and 5 of section 23-02.1-20 of the North Dakota Century Code are amended and reenacted as follows:

3. The medical certification must be completed and signed 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.
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.

Approved March 25, 2003
Filed March 25, 2003

¹⁰⁴ Section 23-02.1-19 was also amended by section 3 of House Bill No. 1092, chapter 382.

CHAPTER 210

HOUSE BILL NO. 1414 (Representatives Porter, Price, Warner) (Senator Grindberg)

DISEASE REPORTING AND QUARANTINE

AN ACT to create and enact a new section to chapter 23-07 of the North Dakota Century Code, relating to reporting disease outbreaks to the state department of health in an emergency; to amend and reenact sections 23-07-02, 23-07.6-01, 23-07.6-02, 23-07.6-03, 23-07.6-04, 23-07.6-05, 23-07.6-06, 23-07.6-07, 23-07.6-08, 23-07.6-09, 23-07.6-10, 23-07.6-11, 23-07.6-12, subsection 8 of section 23-35-08, subdivision h of subsection 2 of section 23-35-12, and subsection 2 of section 40-06-01, relating to disease reporting and quarantine or isolation of persons infected or potentially infected with contagious diseases; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰⁵ **SECTION 1. AMENDMENT.** Section 23-07-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07-02. Who to report reportable diseases. Except as otherwise provided by section 23-07-02.1, the following persons or their designees shall report to the ~~nearest state department of health officer having jurisdiction~~ any reportable disease coming to their knowledge:

1. All health care providers, including physicians, physician assistants, nurse practitioners, nurses, dentists, medical examiners or coroners, pharmacists, emergency medical service providers, and local health officers.
2. All persons who treat or administer to the sick by whatever method The director, principal manager, or chief executive officer of:
 - a. Health care institutions, including hospitals, medical centers, clinics, long-term care facilities, assisted living facilities, or other institutional facilities;
 - b. Medical or diagnostic laboratories;
 - c. Blood bank collection or storage centers;
 - d. Public and private elementary and secondary schools;
 - e. Public and private universities and colleges;

¹⁰⁵ Section 23-07-02 was also amended by section 1 of House Bill No. 1160, chapter 214.

- f. Health or correctional institutions operated or regulated by municipal, county or multi-county, state, or federal governments;
 - g. Funeral establishments and mortuaries; and
 - h. Child care facilities or camps.
3. ~~Householders~~ The state veterinarian, if the disease may be transmitted directly or indirectly to or between humans and animals.
 4. ~~Keepers of hotels, boardinghouses, or lodginghouses.~~
 5. ~~Nurses.~~
 6. ~~Schoolteachers.~~
 7. All other persons treating, nursing, lodging, caring for, or A person having knowledge of the existence of any that a person or persons are suspected of having a reportable disease may notify the department and provide all information known to the person reporting concerning the reportable disease or condition of the person or persons.

If the person reporting is the attending physician or the physician's designee, the physician or the physician's designee shall report not less than twice a week, in the form and manner directed by the state department of health, the condition of the person afflicted and the state of the disease. A person making a report in good faith is immune from liability for any damages which may be caused by that act.

SECTION 2. A new section to chapter 23-07 of the North Dakota Century Code is created and enacted as follows:

Emergency reporting.

1. The state health officer may issue a temporary order for emergency reporting of disease conditions or information if the state health officer finds probable cause to believe there is a threat caused by an imminent or emerging condition affecting the public health, including actual or threatened terrorism.
2. The state health officer may designate who must report, what conditions or information must be reported, what information must be contained in the report, the methods and frequency of reporting, and may make any other pertinent requirement.
3. The temporary order may be issued and is effective without regard to chapter 28-32 for a period of ninety days, unless earlier revoked by the state health officer. Emergency rulemaking must be initiated under chapter 28-32 within ninety days of the order or the order expires. The temporary order and any emergency rulemaking under this section are effective without the necessity of approval from the health council.

SECTION 3. AMENDMENT. Section 23-07.6-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Communicable disease" means a disease or condition that causes serious illness, serious disability, or death, the infectious agent of which may pass or be carried, directly or indirectly, from the body of one person to the body of another.
 2. "Confinement" means quarantine or isolation.
 3. "Isolation" means the physical separation and restrictions on movement or travel of an individual or groups of individuals who are infected or reasonably believed to be infected with a contagious or possibly contagious disease from nonisolated individuals, to prevent or limit the transmission of the disease to nonisolated individuals.
 4. "Local board" means a board of health as defined under section 23-35-01.
 5. "Local health officer" means the health officer of a local board.
 6. "Quarantine" means the physical separation and restrictions on movement or travel of an individual or groups of individuals, who are or may have been exposed to a contagious or possibly contagious disease and who do not show signs or symptoms of a contagious disease, from nonquarantined individuals to prevent or limit the transmission of the disease to nonquarantined individuals.
3. 7. "Respondent" means the person or group of persons ordered to be confined or restricted under this chapter.

SECTION 4. AMENDMENT. Section 23-07.6-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-02. Confinement order.

1. The state health officer or any local ~~board~~ health officer may order any person or group into confinement by a written directive if there are reasonable grounds to believe that the person or group is infected with any communicable disease ~~and is unable or unwilling to behave in a manner as not to expose other persons to danger of infection~~, the state health officer or local ~~board~~ health officer determines that the person or group poses a substantial threat to the public health, and confinement is necessary and is the least restrictive alternative to protect or preserve the public health.
2. Conditions and principles. The state or local health officer shall adhere to the following conditions and principles when isolating or quarantining individuals or groups of individuals:
 - a. Isolation and quarantine must be by the least restrictive means necessary to prevent the spread of a contagious or possibly contagious disease to others and may include confinement to private homes or other private and public premises.
 - b. Isolated individuals must be confined separately from quarantined individuals.

- c. The health status of isolated and quarantined individuals must be monitored regularly to determine if they require isolation or quarantine.
 - d. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a contagious or possibly contagious disease the individual must promptly be removed to isolation.
 - e. Isolated and quarantined individuals must be immediately released when they pose no substantial risk of transmitting a contagious or possibly contagious disease to others.
 - f. The needs of persons isolated and quarantined must be addressed in a systematic and competent fashion, including providing adequate food, clothing, shelter, means of communication with those in isolation or quarantine and outside these settings, medication, and competent medical care.
 - g. Premises used for isolation and quarantine must be maintained in a safe and hygienic manner and be designed to minimize the likelihood of further transmission of infection or other harm to persons isolated and quarantined.
 - h. To the extent possible, cultural and religious beliefs must be considered in addressing the needs of individuals and establishing and maintaining isolation and quarantine premises.
3. Cooperation. Persons subject to isolation or quarantine shall obey the health officer's rules and orders and must not go beyond the isolation or quarantine premises. Failure to obey these provisions is a class B misdemeanor.
4. Entry into isolation or quarantine premises.
- a. Authorized entry. The state or local health officer may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals.
 - b. Unauthorized entry. A person, other than a person authorized by the state or local health officer, must not enter isolation or quarantine premises. Failure to obey this provision is a class B misdemeanor.
 - c. Potential isolation or quarantine. A person entering an isolation or quarantine premises with or without authorization of the state or local health officer may be isolated or quarantined pursuant to subsection 1.
5. This section does not authorize the state health officer or a local public health officer to commandeer, in whole or in part, any hospital or other medical facility.

SECTION 5. AMENDMENT. Section 23-07.6-03 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-03. Contents of the order Procedures for isolation and quarantine. The confinement order must be in writing and set forth the name of the person to be confined; the grounds for the belief that the person has a communicable disease and is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection; that the person poses a substantial threat to the public health and that confinement is necessary and is the least restrictive alternative to protect or preserve the public health; the place of designated confinement; and any conditions or restrictions necessary to protect or preserve the public health. The order must also list the respondent's rights under this chapter. A copy of the order must be given to the respondent. If the order is issued by a local board, the local board, within twenty-four hours of the issuance of the order, shall notify the state health officer that the order has been issued. The order is effective for not more than thirty days. Orders of confinement under this chapter may be issued for successive periods of not more than thirty days each if issued before the last business day of the preceding period of confinement. The isolation and quarantine of an individual or groups of individuals shall be undertaken in accordance with the following procedures.

1. Temporary isolation and quarantine without notice.
 - a. Authorization. The state or a local health officer, within that officer's jurisdiction, may temporarily isolate or quarantine an individual or groups of individuals through a written directive if delay in imposing the isolation or quarantine would significantly jeopardize the health officer's ability to prevent or limit the transmission of a contagious or possibly contagious disease to others.
 - b. Content of directive. The written directive 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 impracticable; the premises subject to isolation or quarantine; the date and time at which isolation or quarantine commences; the suspected contagious disease if known; and decontamination, treatment, or prevention measures that must be followed. The directive must be accompanied by a copy of this chapter and relevant definitions.
 - c. Copies. A copy of the written directive must be given to the individual to be isolated or quarantined or, if the order applies to a group of individuals and it is impractical to provide individual copies, it may be posted in a conspicuous place in the isolation or quarantine premises. The state or local health officer may also use any available mass media, including broadcasting, to provide notice and information about the written directive.
 - d. Petition for continued isolation or quarantine. Within ten days after issuing the written directive, the state or local health officer shall file a petition under subsection 2 for a court order authorizing the continued isolation or quarantine of the isolated or quarantined individual or groups of individuals.
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 of subsection (2) 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 rules of civil procedure. The notice must include a statement that the respondent has the right to counsel, including appointed counsel if indigent and must include a copy of this chapter.

SECTION 6. AMENDMENT. Section 23-07.6-04 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-04. Place of confinement. A respondent must be confined in a place designated in the ~~order~~ written directive until the ~~entity that~~ health officer who issued the ~~order~~ written directive determines that the respondent no longer poses a substantial threat to the public health or until a court of competent jurisdiction orders the release of the respondent. The state department of health or the local board may establish and maintain places of confinement.

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. ~~The respondent or the respondent's representative has a right to be present at the hearing.~~ 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. The respondent, respondent's representative, or respondent's counsel has the right to cross-examine witnesses testifying at the hearing. ~~If the respondent, respondent's representative, or respondent's counsel requests, in writing, a hearing, the hearing must be held within seventy-two hours of~~

~~receipt of the request, excluding Saturdays and holidays. A request petition for a hearing does not stay the order of a written directive ordering confinement. The court shall determine by a preponderance of the evidence if the respondent is infected with a communicable disease, is unable or unwilling to behave in a manner as not to expose other persons to danger of infection, 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 directive for decontamination, treatment, or preventative measures if the petition is granted. If the order is written directive was issued by a local board 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 ~~rights~~ right to counsel or appointed counsel under this chapter and must include a copy of this chapter.

SECTION 9. AMENDMENT. Section 23-07.6-07 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-07. Access to records. Before a hearing conducted under this chapter, the respondent, respondent's representative, or respondent's counsel, and the attorney for the state or local health officer must be afforded access to all records including hospital records if the respondent is hospitalized. If the respondent is hospitalized at the time of the hearing, the hospital shall make available at the hearing for use by the respondent, respondent's representative, ~~or~~ respondent's counsel, and the attorney for the state or local health officer all records in its possession relating to the conditions of the respondent.

SECTION 10. AMENDMENT. Section 23-07.6-08 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-08. Burden of proof. At a hearing conducted under this chapter, the ~~entity that~~ health officer who ordered confinement has the burden of showing by ~~clear and convincing~~ a preponderance of the evidence that the respondent is infected with a communicable disease, ~~is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection,~~ and poses a substantial threat to the public health, and that confinement of the respondent is necessary and is the least restrictive alternative to protect or preserve the public health.

SECTION 11. AMENDMENT. Section 23-07.6-09 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-09. Court findings and orders. If the court finds by ~~clear and convincing~~ a preponderance of the evidence that the respondent is infected with a communicable disease, ~~is unable or unwilling to behave in a manner so as not to expose other persons to danger of infection,~~ and poses a substantial threat to the public health, and that confinement of the respondent is necessary and is the least restrictive alternative to protect or preserve the public health, the court may order the continued confinement of the respondent under any conditions and restrictions the court determines appropriate for decontamination, treatment, or prevention, including remand to the health officer that petitioned the court or issued the original directive, until the ~~entity~~ health officer that issued the original written directive for confinement

~~order~~ determines that the respondent's release would not constitute a substantial threat to the public health, or may order the release of the respondent under any conditions and restrictions the court determines appropriate to protect the public health. If the court fails to find that the conditions required for an order for confinement have been proven, the court shall order the immediate release of the respondent.

SECTION 12. AMENDMENT. Section 23-07.6-10 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-10. Request to terminate or modify an order - Review of confinement orders. A respondent may, at any time, request the court to terminate or modify an order of the court, in which case a hearing must be held in accordance with this chapter. Upon its own motion, the court ~~periodically shall~~ may conduct a hearing to determine if the conditions requiring the confinement or restriction of the respondent continue to exist. Notice of at least five days, but no more than ten business days, must be provided to all parties to the hearing under this section. If the court, at a hearing held upon motion of the respondent or its own motion, finds that the conditions requiring confinement or restriction no longer exist, the court shall order the immediate release of the respondent. If the court finds that the conditions continue to exist but that a different remedy is appropriate under this chapter, the court may modify its order accordingly.

SECTION 13. AMENDMENT. Section 23-07.6-11 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-11. Closed hearing - Confidentiality of information. At the request of the respondent, a hearing conducted under this chapter must be closed and any report, transcript, record, or other information relating to actions taken under this chapter must be kept confidential. Deidentified information may be released to the public under chapter 23-01.3.

SECTION 14. AMENDMENT. Section 23-07.6-12 of the North Dakota Century Code is amended and reenacted as follows:

23-07.6-12. Right of appeal. Any party aggrieved by an order of the district court under this section may appeal to the supreme court. An order of confinement continues in effect while the matter is on appeal.

SECTION 15. AMENDMENT. Subsection 8 of section 23-35-08 of the North Dakota Century Code is amended and reenacted as follows:

8. May adopt ~~quarantine~~ confinement, decontamination, and sanitary measures in compliance with chapter 23-07.6 which are necessary when an infectious or contagious disease exists.

SECTION 16. AMENDMENT. Subdivision h of subsection 2 of section 23-35-12 of the North Dakota Century Code is amended and reenacted as follows:

- h. May determine when ~~quarantine~~ confinement and ~~disinfection~~ decontamination is necessary for the safety of the public. The local health officer may establish ~~quarantines~~ confinements consistent with procedures provided under chapter 23-07.6 and perform any acts required for ~~disinfection~~ decontamination when necessary.

SECTION 17. AMENDMENT. Subsection 2 of section 40-06-01 of the North Dakota Century Code is amended and reenacted as follows:

2. In and over all places within one-half mile [804.67 meters] of the municipal limits for the purpose of enforcing health ~~and quarantine~~ ordinances and regulations, ~~subject to chapter 23-07.6,~~ and police regulations and ordinances adopted to promote the peace, order, safety, and general welfare of the municipality.

Approved April 21, 2003

Filed April 21, 2003

CHAPTER 211**HOUSE BILL NO. 1438**

(Representative Price)
(Senator J. Lee)

HEALTH AND HIV INFORMATION DISCLOSURE

AN ACT to create and enact a new subsection to section 25-01.3-01 and a new section to chapter 44-04 of the North Dakota Century Code, relating to definitions and duties to protect information; to amend and reenact section 23-01.3-02, subsection 1 of section 23-07-01.1, sections 23-07-02.1 and 23-07-02.2, subsections 6, 7, and 8 of section 23-07.5-01, section 23-07.5-02, subsection 1 of section 23-07.5-04, sections 23-07.5-06, 23-07.5-07, and 23-07.5-08, subsection 3 of section 23-07.7-02, sections 23-12-14, 23-16-09, 25-01.3-10, and 25-16-07, subsection 9 of section 26.1-04-03, section 28-01-46.1, subsections 6 and 9 of section 37-18-11, subsection 4 of section 43-15-01, subdivision n of subsection 1 of section 43-15-10, section 43-47-09, subsection 1 of section 44-04-18.1, and section 50-19-10 of the North Dakota Century Code, relating to the use and disclosure of health information, and persons to be tested and the timing of testing for the human immunodeficiency virus; to repeal sections 23-01.3-03, 23-07.5-03, and 23-07.5-05 of the North Dakota Century Code, relating to the disclosure of health information; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01.3-02 of the North Dakota Century Code is amended and reenacted as follows:

23-01.3-02. Disclosure of protected health information - In general.

Protected health information in possession of a public health authority may be disclosed only as authorized by this chapter or another law of this state explicitly authorizing the disclosure of that information, except that protected health information received or maintained under chapter 23-01.1 may be disclosed only as authorized by that chapter. Subject to section 23-01-15, subsection 1 of section 23-07-02.2, and any other requirements of this title, this chapter does not prohibit a public health authority from disclosing protected health information for use in a biomedical research project approved by an institutional review board or public a privacy board or protected health information that has been transformed to protect the identity of the patient through coding or encryption if the information is disclosed for use in an epidemiological or statistical study.

SECTION 2. AMENDMENT. Subsection 1 of section 23-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~All physicians and other medical professionals~~ A physician or other health care provider may report immediately to the department of transportation in writing, the name, date of birth, and address of every ~~person individual~~ person individual fourteen years of age or over coming before them for examination, attendance, care, or treatment ~~when~~ if there is reasonable cause to believe that ~~such person~~ the individual due to physical or mental reason is incapable of safely operating a motor vehicle or

diagnosed as a case of a disorder defined as characterized by lapses of consciousness, gross physical or mental impairments, and the report is necessary to prevent or lessen a serious and imminent threat to the health or safety of the individual or the public.

SECTION 3. AMENDMENT. Section 23-07-02.1 of the North Dakota Century Code is amended and reenacted as follows:

23-07-02.1. Reports of human immunodeficiency virus infection - Penalty. Every attending physician treating an individual known by the physician to have a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, shall make a report on that individual to the state department of health. A person treating an individual known to have human immunodeficiency virus infection in a hospital, a clinic, a sanitarium, the physical custody of the department of corrections and rehabilitation, a regional or local correctional facility or juvenile detention center, the North Dakota youth correctional center, or other private or public institution shall make a report on that individual to the facility administrator or the facility administrator's designee. Further ~~release~~ disclosure of information on any individual known to have human immunodeficiency virus infection may only be provided to medical personnel providing direct care to the individual or as otherwise authorized by law. The designated official shall, if satisfied that the report is valid, make a report to the department on each individual having a diagnosis of human immunodeficiency virus infection, acquired immune deficiency syndrome, or human immunodeficiency virus related illness, including death from human immunodeficiency virus infection, unless the diagnosed individual's attending physician has made such a report. The reports required under this section must contain the name, date of birth, sex, and address of the individual reported on and the name and address of the physician or designated official making the report. Failure by a facility to designate an official to whom reports must be made is an infraction. Any person who in good faith complies with this section is immune from civil and criminal liability for any action taken in compliance with this section.

SECTION 4. AMENDMENT. Section 23-07-02.2 of the North Dakota Century Code is amended and reenacted as follows:

23-07-02.2. Confidentiality of reports. A report required by section 23-07-02.1 and held by the state department of health is ~~strictly~~ confidential information. The information may not be ~~released~~ disclosed, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except that:

1. ~~Release~~ Disclosure may be made of medical or ~~epidemiologic~~ epidemiological information for statistical purposes in a manner such that no individual person can be identified;
2. ~~Release~~ Disclosure may be made of medical or ~~epidemiologic~~ epidemiological information to the extent necessary to enforce section 23-07-02.1 and this section and related rules concerning the treatment, control, and investigation of human immunodeficiency virus infection by public health officials; or
3. ~~Release~~ Disclosure may be made of medical or ~~epidemiologic~~ epidemiological information to medical personnel to the extent necessary to protect the health or life of any individual.

No officer or employee of the state department of health may be examined in any judicial, executive, legislative, or other proceeding regarding the existence or content of any individual's report retained by the department under section 23-07-02.1.

¹⁰⁶ **SECTION 5. AMENDMENT.** Subsections 6, 7, and 8 of section 23-07.5-01 of the North Dakota Century Code are amended and reenacted as follows:

- 6. "Informed consent for testing ~~or disclosure~~" means the written consent on an informed consent form by an individual to the administration of a test to that permission of an individual to be tested for the presence of an antibody to the human immunodeficiency virus or to the disclosure to a specified person of the results of a test administered to the consenting individual.
- 7. "Informed consent form" means a printed document on which an individual may signify that individual's informed consent for testing permission to be tested for the presence of ~~an antibody to the human immunodeficiency virus or authorize the disclosure of any test results obtained.~~
- 8. "Personal physician" means the physician designated by a patient or individual who has had a significant exposure as the patient's or individual's primary physician or if no physician has been designated ~~or the designated physician is unable to make a determination as to whether a significant exposure has occurred, the patient's primary attending physician.~~ The term means the local health officer having jurisdiction in the area the significant exposure has allegedly occurred if the patient has no attending physician or designated primary physician.

¹⁰⁷ **SECTION 6. AMENDMENT.** Section 23-07.5-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-02. Informed consent for testing ~~or disclosure~~ - Exception.

- 1. Except when testing ~~and disclosure~~ is otherwise provided for by law, a health care provider, blood bank, blood center, or plasma center may not subject a person to a test for the presence of ~~an antibody to the human immunodeficiency virus unless the subject of the test, the parent or legal guardian or custodian of a minor who is the subject of the test, or the legal guardian of an incapacitated person who is the subject of the test, first provides informed consent for testing or disclosure as provided under subsection 2.~~
- 2. A health care provider, blood bank, blood center, or plasma center that subjects an individual to a test for the presence of ~~an antibody to the human immunodeficiency virus under subsection 1 shall provide the potential test subject, the parent or legal guardian or custodian of a potential test subject that is a minor, or the legal guardian of a potential~~

¹⁰⁶ Section 23-07.5-01 was also amended by section 3 of House Bill No. 1221, chapter 213.

¹⁰⁷ Section 23-07.5-02 was also amended by section 4 of House Bill No. 1221, chapter 213.

test subject who is incapacitated, with an informed consent form and shall obtain the appropriate individual's signature on the form. The form must contain:

- a. The name of the potential test subject who is giving consent for testing and whose test results may be disclosed and, when appropriate, the name of the individual providing consent on behalf of the potential test subject.
 - b. A statement of explanation that the test results may be disclosed as ~~provided under subsection 4 of section 23-07.5-05~~ and either a listing of the persons or circumstances specified under subsection 4 of section 23-07.5-05 or a statement that the listing is available ~~upon request~~ authorized by law.
 - c. ~~Spaces~~ Space specifically designated for the ~~following purposes:~~
 - (1) ~~The signature of the person providing informed consent for the testing and the date on which the consent is signed; and~~
 - (2) ~~The name of any person to whom the test results may be disclosed, if any; the date on which the consent to disclosure is signed; and the time period during which the consent to disclosure is effective.~~
3. A health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 who provides care to a patient or handles or processes specimens of body fluids or tissues of a patient and who has had a significant exposure with the patient may subject the patient's blood to a test for the presence of the human immunodeficiency virus, without the patient's consent, if all of the following apply:
- a. A sample of the patient's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
 - b. The ~~patient's~~ personal physician of the individual exposed, based on information provided to the physician, determines and certifies in writing that the individual has had a significant exposure. The certification must accompany the request for testing and disclosure.
 - c. The patient is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.
 - d. Before testing, the patient is informed, while competent and conscious, that the patient's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to ~~no one including the patient without the patient's consent, except to,~~ the individual who has had a significant exposure, and any other person as authorized by law; that if the individual who has had a significant exposure knows the identity of the patient, that individual may not disclose the patient's identity to any other person except for the purpose of having the test

performed; and that a record of the test results may be placed in the individual's medical record, and if not in the medical record, may be kept only if the record does not reveal the patient's identity. ~~A person who discloses the identity of a patient under subsection 3, 4, 5, 6, 7, or 8 is guilty of a class C felony.~~ Each individual who has had a significant exposure and to whom test results are disclosed must first sign a document indicating that individual's understanding that the individual may not disclose the ~~information~~ patient's identity and that disclosing the information constitutes a class C felony.

4. A patient who has received care from a health care provider, emergency medical services provider, or a person rendering aid under chapter 32-03.1 and who has had a significant exposure with the provider may subject the provider's blood to a test for the presence of the human immunodeficiency virus, without the provider's consent, if all of the following apply:
 - a. A sample of the provider's blood has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
 - b. A physician, based on information provided to the physician, determines and certifies in writing that the patient has had a significant exposure. The certification must accompany the request for testing and disclosure.
 - c. The provider or a person rendering aid under chapter 32-03.1 is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.
 - d. Before testing, the provider is informed, while competent and conscious, that the provider's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to ~~no one including the provider without the provider's consent, except to the patient,~~ the individual who has had a significant exposure, and any other person as authorized by law; that if the patient who has had a significant exposure knows the identity of the provider, that patient may not disclose the identity to any other person except for the purpose of having the test performed; and that a record may be kept of the test results only if the record does not reveal the provider's identity. ~~A person who discloses the identity of the provider or otherwise breaches the confidentiality requirements of this subsection is guilty of a class C felony.~~ Each patient who has had a significant exposure and to whom test results are disclosed must first sign a document indicating ~~that~~ the patient's understanding that the patient may not disclose the information provider's identity and that disclosing the information constitutes a class C felony.
5. If a person who is the subject of a reported significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained in accordance with section 23-12-13. If a person who is the subject of a reported significant exposure dies without an opportunity to consent to testing prior to admission to, or discharge or release from, the facility that received that

person, collection of appropriate specimens and testing for the presence of bloodborne pathogens, including human immunodeficiency virus, hepatitis B, and hepatitis C infection must be conducted within twenty-four hours. A licensed physician with expertise in infectious diseases shall make the determination of which tests are required. Results of these tests must be provided to the physician providing care for the person who experienced the significant exposure. If a facility that received the person who died fails to test for the presence of bloodborne pathogens as required under this subsection because the facility was not aware of the exposure or it was not reasonably possible to conduct the testing, the facility shall provide the physician providing care for the exposed emergency medical services provider, health care provider, or person who rendered aid under chapter 32-03.1 testing results of any bloodborne pathogen present in any medical records of the dead person which are in the facility's control within twenty-four hours. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the person who died shall attempt to obtain testing results of bloodborne pathogens of the deceased within twenty-four hours from the facility where it is believed results exist. The test results must be provided to the physician providing care for the person who experienced the significant exposure.

6. Any testing done pursuant to subsection 3, 4, or 5 ~~may~~ must be conducted in ~~the most~~ a reasonably expedient manner ~~possible~~. An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an appropriate district court for issuance of an order directing the patient or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the person to be tested until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within five days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:
 - a. The patient or provider has been requested to consent to testing and has refused to be tested and a sample of the patient's or provider's blood is not available to be used to test for the human immunodeficiency virus;
 - b. The court finds probable cause to believe that the person petitioning for the testing has had a significant exposure with the person to be tested;
 - c. The petition substitutes a pseudonym for the true name of the person to be tested;
 - d. The court provides the person to be tested with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;

- e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and
 - f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.
7. ~~A person~~ An exposed individual may request two tests of the test subject after a significant exposure. ~~The first~~ Each test may be requested ~~within ten days after a significant exposure, and the second test may be requested not earlier than five months, nor as soon as practicable, consistent with the recommendations of the United States public health service, but in no event later than six~~ nine months, after a significant exposure. ~~The tested person~~ test subject must provide a blood sample within twenty-four hours after the first request and within seventy-two hours after the second request, subject to the provisions of this chapter.
 8. A health care provider who subjects a patient to a significant exposure must notify the patient of the exposure. A health care provider witnessing a significant exposure may report the exposure pursuant to any appropriate facility or employer guidelines ~~that to which~~ the provider may be subject. The knowing failure to inform a patient of a significant exposure or refusal to submit to testing as required under this chapter may be considered by a health care provider's licensing board to constitute conduct that may subject the licensee to disciplinary action.

SECTION 7. AMENDMENT. Subsection 1 of section 23-07.5-04 of the North Dakota Century Code is amended and reenacted as follows:

1. Obtain from the test subject; the subject's parent, legal guardian, or custodian if the subject is a minor; or the test subject's legal guardian if the subject is incapacitated, informed consent for testing ~~or disclosure~~, unless testing ~~and procedures for disclosure are~~ is otherwise ~~provided~~ authorized by law.

SECTION 8. AMENDMENT. Section 23-07.5-06 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-06. Expanded disclosure of test results prohibited. A person to whom the results of a test for ~~the presence of an antibody to~~ the human immunodeficiency virus have been disclosed under ~~subsection 4 of section 23-07.5-05~~ this chapter may not disclose the test results except as ~~provided under that subsection~~ authorized by law.

SECTION 9. AMENDMENT. Section 23-07.5-07 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-07. Civil liability. Any person who violates section ~~23-07.5-02, subsection 4 of section 23-07.5-05, or section 23-07.5-06~~ is liable to the subject of the test for actual damages and costs plus exemplary damages. ~~The plaintiff in an action under this section has the burden of proving by preponderance of the evidence that a violation occurred under section 23-07.5-02, subsection 4 of section 23-07.5-05, or section 23-07.5-06.~~ A conviction for violation of this chapter is not a condition precedent to bringing an action under this section.

SECTION 10. AMENDMENT. Section 23-07.5-08 of the North Dakota Century Code is amended and reenacted as follows:

23-07.5-08. Penalty. A person who ~~intentionally~~ knowingly discloses the results of a blood test in violation of ~~subsection 4 of section 23-07.5-05 and thereby causes bodily or psychological harm to the subject of the test~~ this chapter is guilty of a class C felony, if the offense is committed with intent to disclose the identity of the individual who was tested.

SECTION 11. AMENDMENT. Subsection 3 of section 23-07.7-02 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~Notwithstanding section 23-07.5-03, the~~ The laboratory shall send a copy of the test results to the physicians designated in the court order, who shall then release the test results to the defendant or alleged juvenile offender and each requesting victim as designated in the court order. The court order must be served on the physicians before any test. The laboratory also shall send a copy of test results that indicate exposure to or infection by acquired immunodeficiency syndrome virus, acquired immunodeficiency syndrome-related conditions, or other sexually transmitted diseases to the state department of health.

SECTION 12. AMENDMENT. Section 23-12-14 of the North Dakota Century Code is amended and reenacted as follows:

23-12-14. Copies of medical records.

4. As used in this section, "medical health care provider" means a licensed individual or licensed facility providing health care services. ~~This section applies to every medical provider unless expressly provided otherwise by law.~~ Upon the ~~written~~ request of a medical health care provider's patient or any person authorized by a patient, the ~~medical~~ provider shall:
 - a. ~~Provide~~ provide a free copy of a patient's medical health care records to a medical health care provider designated by the patient or the person authorized by the patient if the records are requested for the purpose of transferring that patient's medical health care to another medical health care provider for the continuation of medical treatment.
 - b. Provide a copy of a patient's medical records requested for any purpose other than the continuation of care for a maximum charge of twenty dollars for the first twenty-five pages and seventy-five cents per page for every page beyond twenty-five. This charge includes any administrative fee, retrieval fee, and postage expense.
2. a. ~~Except as specified in section 26.1-36-12.4 or subsection 3, a written medical records release is valid for the period of time specified in the release or three years, whichever is shorter.~~
- b. ~~A patient or any person authorized by the patient may revoke a medical records release at any time by providing written notification to the medical provider.~~

3. ~~Notwithstanding the period of validity under subdivision a of subsection 2, a signed medical records release authorizes a medical provider to forward a patient's medical records to another medical provider during the period of time necessary to complete the patient's course of treatment and to conclude all medical and financial aspects of the case.~~
4. ~~It is not a prohibited practice as defined in chapter 26.1-04 for health insurance companies with participating provider agreements to require that subscribers or members are responsible for providing the insurer copies of medical records used for claims processing when using nonparticipating providers.~~

SECTION 13. AMENDMENT. Section 23-16-09 of the North Dakota Century Code is amended and reenacted as follows:

23-16-09. Information confidential. Information other than reports relating to vital statistics received by the state department of health through inspection or otherwise, authorized under this chapter are confidential and may not be disclosed publicly except in a proceeding involving the question of license. ~~In the case of hospitals and related institutions providing maternity care, no~~ No agent of the state department of health or of any board of health, nor the licensee under the provisions of this chapter may disclose the contents of case records individually identifiable health information of such an institution obtained in the course of a survey or inspection except:

4. ~~In~~ in a judicial or administrative proceeding;
2. ~~To legally constituted health or social agencies specifically interested in the patients; and~~
3. ~~To persons having direct interest in the well-being of the patient, or her infant, and who are in a position to serve their interests should that be necessary~~ in response to an order of a court or administrative tribunal.

SECTION 14. A new subsection to section 25-01.3-01 of the North Dakota Century Code is created and enacted as follows:

"Individually identifiable health information" and "personal representative" have the meaning set forth in title 45, Code of Federal Regulations, part 160, section 103 and part 164, section 5-02, subsection g, respectively.

SECTION 15. AMENDMENT. Section 25-01.3-10 of the North Dakota Century Code is amended and reenacted as follows:

25-01.3-10. Confidentiality and privileged information.

1. ~~All documents, records, information, memoranda, reports, complaints, or written or nonwritten communication information relating to an individual with a disability, including individually identifiable health information, that is in the possession of the committee, project, or any advocate relating to an identified or identifiable person with developmental disabilities or mental illness are~~ is confidential and are is not subject to disclosure, except:

- a. ~~When release is consented to in writing by all persons~~ If an authorization for disclosure is given in writing by each individual with developmental disabilities or mental illnesses identified or identifiable in the documents, records, information, memoranda, reports, complaints, or written or nonwritten communications a disability who may be identifiable from the information, or that individual's personal representative;
 - b. In a judicial proceeding when ordered by the presiding judge;
 - c. ~~To officers of the law~~ a law enforcement officer for a law enforcement purpose, a health oversight agency, or, in at the discretion of the committee, to any other legally constituted board or agency serving the interests of persons with mental illness or developmental disabilities an individual with a disability for any other purpose authorized by this chapter, or any other state or federal law; or
 - d. To the parents of a minor who is an eligible person under sections 25-01.3-01 through 25-01.3-12 or legal guardians of the person with ~~mental illness or developmental~~ a disability except that no information may be ~~released~~ disclosed to the a person with mental illness who is the subject of the information when such release a disclosure is prohibited by state or federal law.
2. Unless ordered by a court of competent jurisdiction, the name of a ~~person~~ an individual who in good faith makes a report or complaint may not be ~~released or~~ disclosed by the committee or the project.

¹⁰⁸ **SECTION 16. AMENDMENT.** Section 25-16-07 of the North Dakota Century Code is amended and reenacted as follows:

25-16-07. Records of treatment or care center confidential. ~~No~~ Except as otherwise authorized by law, no agent of the department of human services or the superintendent of the developmental center at westwood park, Grafton or the licensee or their agents or employees may disclose the contents of the individual records of a treatment or care center for developmentally disabled persons, nor of the reports received ~~therefrom~~ from them, except:

1. In a judicial proceeding when ordered by the presiding judge;
2. ~~To officers of the law~~ a law enforcement official for a law enforcement purpose or any other legally constituted boards or agencies serving the interests of the residents for treatment, payment, or health care operations, to arrange, facilitate, or coordinate service to any such person; or
3. To the parents or legal guardians of the resident.

¹⁰⁸ Section 25-16-07 was also amended by section 1 of House Bill No. 1425, chapter 230.

¹⁰⁹ **SECTION 17. AMENDMENT.** Subsection 9 of section 26.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

9. Unfair claim settlement practices. Committing any of the following acts, if done without just cause and if performed with a frequency indicating a general business practice:
 - a. Knowingly misrepresenting to claimants pertinent facts or policy provisions relating to coverages at issue.
 - b. Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under insurance policies.
 - c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.
 - d. Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims submitted in which liability has become reasonably clear.
 - e. Compelling insureds to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them when the insureds have made claims for amounts reasonably similar to the amounts ultimately recovered.
 - f. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.
 - g. Attempting settlement or compromise of claims on the basis of applications which were altered without notice to, or knowledge or consent of, insureds.
 - h. Attempting to settle a claim for less than the amount to which a reasonable person would have believed one was entitled by reference to written or printed advertising material accompanying or made a part of an application.
 - i. Attempting to delay the investigation or payment of claims by requiring an insured and the insured's physician to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.
 - j. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss has been completed.

¹⁰⁹ Section 26.1-04-03 was also amended by section 2 of Senate Bill No. 2195, chapter 239.

- k. Refusing payment of claims solely on the basis of the insured's request to do so without making an independent evaluation of the insured's liability based upon all available information.
- l. Providing coverage under a policy issued under chapter 26.1-45 or 26.1-36.1 for confinement to a nursing home and refusing to pay a claim when a person is covered by such a policy and the person's physician ordered confinement pursuant to the terms of the policy for care other than custodial care. Custodial care means care which is primarily for the purpose of meeting personal needs without supervision by a registered nurse or a licensed practical nurse.
- m. Failure to use the standard health insurance proof of loss and claim form or failure to pay a health insurance claim as required by section 26.1-36-37.1.

It is not a prohibited practice for a health insurance company with participating provider agreements to require that a subscriber or member using a nonparticipating provider be responsible for providing the insurer a copy of medical records used for claims processing.

SECTION 18. AMENDMENT. Section 28-01-46.1 of the North Dakota Century Code is amended and reenacted as follows:

28-01-46.1. Waiver of privilege for health care providers and informal discussion. A party who commences an action for malpractice, error, mistake, or failure to cure, whether based on contract or tort, against a health care provider, as defined in section 32-42-01, or a health care facility, on the person's own behalf or in a representative capacity, waives in that action any privilege existing under rule 503 of the North Dakota Rules of Evidence, as to any medical records, opinions, or other information in the possession of any other health care provider who has examined or cared for the party or other person whose health or medical condition has been placed in controversy in the action. The waiver must permit all defendants to the action, and their attorneys or authorized representatives, to examine the medical records, opinions, or other information and informally participate in a discussion with the health care provider, if the provider consents, regarding the medical records, opinions, or other information that appear reasonably calculated to lead to the discovery of admissible evidence as to any element of the action or the defense of the action. Any statements made by a health care provider during an informal discussion are not admissible, directly or by reference in direct or cross-examination of any witness, in any administrative, civil, or criminal proceeding. However, this section does not render inadmissible any statements obtained from the health care provider in discovery or any legal proceedings independent of the informal discussion which are otherwise admissible in the administrative, civil, or criminal proceeding.

The plaintiff's attorney or authorized representative must have the opportunity to be present at any informal discussion. This requirement is satisfied if the defendant's attorney serves a written notice on the plaintiff's attorney at least fifteen days prior to the informal discussion stating the time, date, and location of the informal discussion. If the plaintiff's attorney, after consultation with the defendant's attorney, is unable to attend the discussion at the time or on the date specified in the notice or at some other agreed-upon date and time, the court in which the action is pending shall, upon motion of any party before the date specified in the notice, hold a scheduling conference to set a date and time for the informal discussion that will best

serve the convenience of the parties and the health care provider and the interests of justice. Appropriate ~~medical~~ authorizations permitting access to the written medical record, informal discussion, and testimony at a deposition or trial must be provided by the party commencing the action ~~upon request from any other party to the action at the time the action is commenced.~~ If the party commencing the action fails to provide appropriate authorizations at the time the action is commenced, the health care provider or health care facility may use other means to obtain the records such as by subpoena or by seeking a court order. If alternative means to obtain a patient's records are used, the court shall award reasonable costs incurred by the health care provider or health care facility in obtaining those records, including reasonable attorney's fees.

SECTION 19. AMENDMENT. Subsection 6 of section 37-18-11 of the North Dakota Century Code is amended and reenacted as follows:

6. Medical information may be disclosed as follows:

- a. ~~Information~~ Except as otherwise required by law, information contained in medical records on file may shall be released disclosed to the veteran resident on request, except information contained in the medical record which would prove injurious to his physical or mental health, in which case the information will be released only to his duly authorized representative.
- b. Information contained in medical records of ~~veterans residents~~ and beneficiaries pertaining to medical history, diagnosis, findings, or treatment may be disclosed directly to physicians and hospitals ~~upon request and the submission of a written authorization from the veteran or beneficiary, or in the event he is incompetent, from his duly authorized representative for treatment, payment, and health care operations, and as otherwise authorized by law. This information will be released only with the consent of the patient and on the condition that it is to be treated as a privileged communication confidential information. However, such~~ This information also may be released disclosed without the consent of the veteran resident or his the resident's personal representative when a request for such the information is received from the veterans' administration, the United States public health service, the superintendent of a state hospital, a commissioner or head of a state department of mental hygiene, or head of a state, county, or city health department and the disclosure is required by law, or for the purpose of treatment, payment, or health care operations.

SECTION 20. AMENDMENT. Subsection 9 of section 37-18-11 of the North Dakota Century Code is amended and reenacted as follows:

9. ~~Members~~ Subject to the limitations of any other law, members of the legislative assembly may be furnished such information contained in department files as may be requested for official use.

SECTION 21. AMENDMENT. Subsection 4 of section 43-15-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "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,

which is privileged and may be released only to the patient or, as the patient directs, to those practitioners and other pharmacists where, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being, and to such other persons or governmental agencies authorized by law to receive such confidential information.

SECTION 22. AMENDMENT. Subdivision n of subsection 1 of section 43-15-10 of the North Dakota Century Code is amended and reenacted as follows:

- n. ~~Divulges or reveals~~ Discloses confidential information to ~~an unauthorized~~ any person, except as authorized by law.

SECTION 23. AMENDMENT. Section 43-47-09 of the North Dakota Century Code is amended and reenacted as follows:

43-47-09. Confidentiality. ~~Except as provided in chapter 50-25.1~~ authorized by law, no person licensed under this chapter may be required to disclose any information acquired in rendering counseling services without the consent of the person who received the counseling services.

¹¹⁰ **SECTION 24. AMENDMENT.** Subsection 1 of section 44-04-18.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and, except as otherwise authorized by law, may not be ~~released~~ used or disclosed without the ~~written consent~~ authorization of the employee. As used in this section, the term "public employee" includes any individual who has applied for employment, is employed, or has been employed by a public entity.

SECTION 25. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Business associate - Duty to protect information.

1. As used in this section, "business associate" has the meaning set forth in title 45, Code of Federal Regulations, part 160, section 103.
2. If a public entity is acting as a business associate of another public entity, the entity acting as a business associate shall comply with all the requirements applicable to a business associate under title 45, Code of Federal Regulations, part 164, section 504, subsection e, paragraph 2.

SECTION 26. 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. ~~No~~ Except as otherwise authorized by law, no agent of the state department of health or the

¹¹⁰ Section 44-04-18.1 was also amended by section 1 of House Bill No. 1078, chapter 381, and section 8 of House Bill No. 1092, chapter 382.

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 ~~therefrom~~ from them, except:

1. In a judicial or administrative proceeding when ordered by the presiding judge in response to an order of a court or administrative tribunal; or
2. ~~To officers of the law or other legally constituted boards or agencies serving the interests of the patient or her infant.~~ For a law enforcement purpose to a law enforcement official or a health oversight agency for oversight activities authorized by law.

SECTION 27. REPEAL. Sections 23-01.3-03, 23-07.5-03, and 23-07.5-05 of the North Dakota Century Code are repealed.

SECTION 28. EFFECTIVE DATE. This Act is effective April 14, 2003.

SECTION 29. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 15, 2003
Filed April 15, 2003

CHAPTER 212

SENATE BILL NO. 2289

(Senators J. Lee, Fischer, Kilzer, Mathern)
(Representatives Niemeier, Price)

CHICKENPOX INOCULATIONS FOR CHILDREN

AN ACT to amend and reenact subsection 1 of section 23-07-17.1 of the North Dakota Century Code, relating to required inoculations for children.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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 immunization against diphtheria, pertussis, tetanus, measles, rubella (German measles), mumps, hepatitis B, haemophilus influenza type b (Hib), varicella (chickenpox), and poliomyelitis. 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.

Approved March 14, 2003

Filed March 17, 2003

CHAPTER 213

HOUSE BILL NO. 1221

(Representatives Grande, Hawken, Meier, Potter)
(Senators Christenson, J. Lee)

CONTAGIOUS DISEASE TESTING

AN ACT to amend and reenact sections 23-07.3-01 and 23-07.3-02, subsections 1 and 10 of section 23-07.5-01, and subsections 3, 5, and 6 of section 23-07.5-02 of the North Dakota Century Code, relating to testing for contagious diseases; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-07.3-01 of the North Dakota Century Code is amended and reenacted as follows:

23-07.3-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Contagious disease" means ~~the interruption, cessation, or disorder of body functions, systems, or organs transmissible by association with the sick or their secretions or excretions, excluding the common cold~~ a reportable condition or disease under section 23-07-01.
2. "Department" means the state department of health.
3. "~~Emergency medical services provider~~ Exposed individual" means a human being who had a significant exposure with a test subject and who is a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or other person an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including an individual rendering aid under chapter 32-03.1.
4. "Licensed facility" means a hospital, nursing home, dialysis center, or any entity licensed by the state to provide medical care.
5. "Significant exposure" means:
 - a. Contact of broken skin or mucous membrane with a patient's or other individual's blood or bodily fluids other than tears or perspiration;
 - b. The occurrence of a needle stick or scalpel or instrument wound in the process of caring for a patient; or
 - c. Exposure that occurs by any other method of transmission defined by the department as a significant exposure.
6. "Test subject" means the individual to be tested after a significant exposure with another individual.

SECTION 2. AMENDMENT. Section 23-07.3-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07.3-02. Procedures following significant exposure - Penalty.

1. If an ~~emergency medical services provider~~ exposed individual has a significant exposure ~~in the process of caring for a patient with a test subject~~, the ~~emergency medical services provider~~ exposed individual shall document that exposure. The documentation must be ~~on forms approved by the department, and in the manner and time designated by the department~~ conducted in accordance with the exposed individual's employer's occupational health program or through the exposed individual's health care provider.
2. Upon notification of a significant exposure, or upon receipt of the documentation described in subsection 1, the ~~attending physician~~ exposed individual, that individual's employer, or the exposed individual's health care provider shall request the ~~patient~~ test subject to consent to testing to determine the presence of any contagious disease that may be transmitted by that exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. The patient test subject must be informed that the patient test subject may refuse to consent to the test and, if the patient test subject refuses, that the fact of the patient's refusal will be forwarded to the emergency medical services provider exposed individual. If the patient test subject consents to testing, the attending physician test subject shall test be tested for the presence of contagious disease diseases that may be transmitted by that exposure. The testing must be at the expense of the exposed individual or that individual's employer. If the test subject is convicted of a crime relating to the significant exposure or the significant exposure occurred during an arrest or other contact with the exposed individual in the course of that individual's official duties, then a court may order the test subject to pay for the testing.
3. If a ~~patient~~ test subject who is the subject of a ~~reported~~ significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained ~~from the patient's next of kin or legal guardian in accordance with section 23-12-13.~~ If a ~~patient~~ test subject who is the subject of a reported significant exposure dies without an opportunity to consent to testing ~~prior to admission to, or discharge or release from, the facility that received the patient,~~ testing for the presence of any contagious disease that could be transmitted by that exposure must be conducted. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases.
4. The ~~attending physician~~ health care provider that conducted the test under this section shall report the results of the test to the ~~department and to the emergency medical services provider~~ exposed individual who reported the significant exposure. The physician health care provider shall use a case number instead of the patient's test subject's name in making a report to the emergency medical services provider exposed individual who requested the test to ensure the confidentiality of the patient's test subject's identity. All positive test results must be reported to the department in accordance with section 23-07-02.

5. A health care provider or an exposed individual who has had a significant exposure with a test subject may subject that individual's blood to a test for the presence of a contagious disease or diseases, without the test subject's consent if all of the following apply:
- a. A sample of the test subject's blood has been drawn for other purposes and is available to be used to test for the presence of contagious disease.
 - b. The exposed individual's personal physician, based on information provided to the physician, determines and certifies in writing that the individual had a significant exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. The certification must accompany the request for testing and disclosure.
 - c. The test subject is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.
 - d. Before testing, the test subject is informed, while competent and conscious, that the test subject's blood may be tested for the presence of contagious disease; that the test results may not be disclosed to anyone without the test subject's consent, except to the exposed individual and the department; that if the exposed individual knows the identity of the test subject, the exposed individual may not disclose the identity to any other person, except for the purpose of having the test performed; and that a record of the test results may be placed in the test subject's medical record, and if not in the medical record, may be kept only if the record does not reveal the test subject's identity. A person who discloses the identity of an individual being tested is guilty of a class C felony. Each exposed individual who has had a significant exposure and to whom test results are disclosed shall first sign a document indicating the exposed individual's understanding that the exposed individual may not disclose the information and that disclosing the information is a class C felony.
6. If the test subject does not consent to testing or if consent has not been obtained in accordance with subsection 3, then an exposed individual may petition an appropriate district court for issuance of an order directing the test subject to be tested for the presence of one or more specified contagious diseases that could be transmitted by that exposure. The determination of which tests are required must be made by a licensed physician with expertise in infectious diseases. Upon receiving the petition, the court may issue an order confining the test subject until the hearing or an order establishing reasonable security for that individual's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within three days of the date the court receives the petition. The record of a court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:

- a. The test subject has been requested to consent to the testing and has refused to be tested or if consent for testing has not been obtained under subsection 3;
- b. The court finds probable cause to believe that the individual petitioning for the testing had a significant exposure with the test subject;
- c. The petition substitutes a pseudonym for the true name of the test subject;
- d. The court provides the test subject with notice and reasonable opportunity to participate in the proceeding if the test subject is not already a party to the proceeding;
- e. The proceedings are conducted in camera unless the test subject agrees to a hearing in open court; and
- f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

¹¹¹ **SECTION 3. AMENDMENT.** Subsections 1 and 10 of section 23-07.5-01 of the North Dakota Century Code are amended and reenacted as follows:

1. "~~Emergency medical services provider~~ Exposed individual" means a human being who had a significant exposure with another individual who is subject to testing and who is a firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or other person an individual trained and authorized by law or rule to render emergency medical assistance or treatment, including a person rendering aid under chapter 32-03.1.
10. "Universal precautions" means measures that a health care provider, emergency medical ~~services provider~~ technician, exposed individual, or a person an individual rendering aid under chapter 32-03.1 takes in accordance with recommendations of the federal centers for disease control and prevention concerning human immunodeficiency virus transmission in United States public health care settings service to prevent transmission of disease.

¹¹² **SECTION 4. AMENDMENT.** Subsections 3, 5, and 6 of section 23-07.5-02 of the North Dakota Century Code are amended and reenacted as follows:

3. A health care provider, ~~emergency medical services provider,~~ or a ~~person rendering aid under chapter 32-03.1 who provides care to a patient or handles or processes specimens of body fluids or tissues of a~~

¹¹¹ Section 23-07.5-01 was also amended by section 5 of House Bill No. 1438, chapter 211.

¹¹² Section 23-07.5-02 was also amended by section 6 of House Bill No. 1438, chapter 211.

~~patient and an exposed individual who has had a significant exposure with the patient~~ another individual may subject ~~the patient's~~ that individual's blood to a test for the presence of the human immunodeficiency virus, without ~~the patient's~~ that individual's consent, if all of the following apply:

- a. A blood sample of the ~~patient's blood~~ individual who is the test subject has been drawn for other purposes and is available to be used to test for the presence of the human immunodeficiency virus.
 - b. The ~~patient's~~ exposed individual's personal physician, based on information provided to the physician, determines and certifies in writing that the individual ~~has~~ had a significant exposure. The certification must accompany the request for testing and disclosure.
 - c. The ~~patient~~ test subject is capable of consenting when the test is requested, has been given an opportunity to be tested with consent, and has not consented.
 - d. Before testing, the ~~patient~~ test subject is informed, while competent and conscious, that the ~~patient's~~ test subject's blood may be tested for the presence of human immunodeficiency virus; that the test results may be disclosed to no one ~~including the patient~~ without the ~~patient's~~ test subject's consent, except to the exposed individual who has had a significant exposure, the department, and any other person authorized by law; that if the exposed individual who has had a significant exposure knows the identity of the ~~patient~~ test subject, ~~that the exposed individual~~ may not disclose the identity to any other person, except for the purpose of having the test performed; and that a record of the test results may be placed in the ~~individual's~~ test subject's medical record, and if not in the medical record, may be kept only if the record does not reveal the ~~patient's~~ test subject's identity. ~~A person who discloses the identity of a patient under subsection 3, 4, 5, 6, 7, or 8 is guilty of a class C felony.~~ Each exposed individual who has had a significant exposure and to whom test results are disclosed ~~must~~ shall first sign a document indicating ~~that the exposed individual's~~ understanding that the exposed individual may not disclose the information and that disclosing the information constitutes a class C felony.
5. If a ~~person~~ an individual who is the subject of a ~~reported~~ significant exposure is unconscious or incapable of giving informed consent for testing under this section, that consent may be obtained in accordance with section 23-12-13. If a ~~person~~ an individual who is the subject of a ~~reported~~ significant exposure dies without an opportunity to consent to testing ~~prior to admission to, or discharge or release from, the facility that received that person,~~ collection of appropriate specimens and testing for the presence of bloodborne pathogens, including human immunodeficiency virus, hepatitis B, and hepatitis C infection must be conducted within twenty-four hours. A licensed physician with expertise in infectious diseases shall make the determination of which tests are required. Results of these tests must be provided to the physician providing care for the ~~person~~ individual who experienced the significant exposure. If a facility that received the ~~person~~ individual who died fails

to test for the presence of bloodborne pathogens as required under this subsection ~~because the facility was not aware of the exposure or it was not reasonably possible to conduct testing,~~ the facility shall provide the physician providing care for the exposed ~~emergency medical services provider,~~ individual or health care provider, ~~or person who rendered aid under chapter 32-03.4~~ testing results of any bloodborne pathogen present in any medical records of the dead person which are in the facility's control within twenty-four hours. If there are no testing results for bloodborne pathogens within that facility and there is reason to believe that results are available from another facility, the facility that received the person who died shall attempt to obtain testing results of bloodborne pathogens of the deceased within twenty-four hours from the facility where it is believed results exist. The test results must be provided to the physician providing care for the ~~person~~ individual who experienced the significant exposure.

6. Any testing done pursuant to subsection 3, 4, or 5 ~~may~~ must be conducted in ~~the most~~ a reasonably expedient manner ~~possible~~. An individual who has had a significant exposure, upon receiving certification of the significant exposure as required by subdivision b of subsection 3 or subdivision b of subsection 4, may petition an appropriate district court for issuance of an order directing ~~the~~ another individual, patient, or provider with whom the individual had a significant exposure to have blood drawn to be tested for the presence of the human immunodeficiency virus if a previously drawn blood sample is not available for testing. Upon receiving the petition, the court may issue an order confining the ~~person~~ test subject to be tested until the hearing or an order establishing reasonable security for that person's attendance at the hearing. This order may be modified or extended if testing is ordered. The court shall hold a hearing on the petition within ~~five~~ three days of the date the court receives the petition. The record of any court hearing conducted under this subsection is confidential. The court may issue an order requiring testing under this subsection only if:
 - a. The other individual, patient, or provider has been requested to consent to testing and has refused to be tested and a sample of the ~~patient's or provider's~~ test subject's blood is not available to be used to test for the human immunodeficiency virus;
 - b. The court finds probable cause to believe that the person petitioning for the testing ~~has~~ had a significant exposure with the ~~person to be tested~~ test subject;
 - c. The petition substitutes a pseudonym for the true name of the ~~person to be tested~~ test subject;
 - d. The court provides the ~~person to be tested~~ test subject with notice and reasonable opportunity to participate in the proceeding if the person is not already a party to the proceeding;
 - e. The proceedings are conducted in camera unless the subject of the test agrees to a hearing in open court; and

- f. The court imposes appropriate safeguards against unauthorized disclosure which must specify the persons who have access to the information, the purposes for which the information may be used, and appropriate prohibition on future disclosure.

Approved April 9, 2003
Filed April 9, 2003

CHAPTER 214

HOUSE BILL NO. 1160

(Human Services Committee)

(At the request of the State Department of Health)

ASSISTED LIVING AND LODGING FACILITY REGULATION

AN ACT to amend and reenact sections 23-07-02, 23-09-01, 23-09-02.1, 23-09-03, 23-09-05, 23-09-06, 23-09-07, 23-09-09, 23-09-10, 23-09-11, 23-09-14, 23-09-16, 23-09-17, 23-09-18, 23-09-21, 23-09-22, 50-10.1-01, and 50-10.2-01 of the North Dakota Century Code, relating to assisted living facilities and lodging establishments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹³ **SECTION 1. AMENDMENT.** Section 23-07-02 of the North Dakota Century Code is amended and reenacted as follows:

23-07-02. Who to report reportable diseases. Except as otherwise provided by section 23-07-02.1, the following persons shall report to the nearest health officer having jurisdiction any reportable disease coming to their knowledge:

1. All physicians.
2. All persons who treat or administer to the sick by whatever method.
3. Householders.
4. Keepers of ~~hotels, boardinghouses, or lodginghouses~~ lodging establishments and assisted living facilities.
5. Nurses.
6. Schoolteachers.
7. All other persons treating, nursing, lodging, caring for, or having knowledge of the existence of any reportable disease.

If the person reporting is the attending physician, the physician shall report not less than twice a week, in the form and manner directed by the state department of health, the condition of the person afflicted and the state of the disease.

¹¹³ Section 23-07-02 was also amended by section 1 of House Bill No. 1414, chapter 210.

¹¹⁴ **SECTION 2. AMENDMENT.** Section 23-09-01 of the North Dakota Century Code is amended and reenacted as follows:

23-09-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Assisted living facility" means a building or structure containing a series of living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility in this chapter includes a facility that is defined as an assisted living facility in any other part of the code. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16.
2. "Bakery" means an establishment or any part of an establishment that manufactures or prepares bread or bread products, pies, cakes, cookies, crackers, doughnuts, or other similar products, or candy, whether plain; chocolate or chocolate coated; mixed with nuts, fruits, or other fillers; covered with chocolate or other coating; and shaped, molded, or formed in various shapes. The term does not include food service establishments nor home cake decorators.
2. ~~"Boardinghouse" includes every building or structure, or any part thereof, with accommodations for four or more boarders, which is kept, used, maintained, advertised, or held out to the public as a place where food is furnished to regular boarders for periods of one week or more. The term does not include a facility providing personal care directly or through contract as defined in section 23-09.3-01.~~
3. "Commissary" means a catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored, including a service center or base of operations directly from which mobile food units are supplied or serviced. The term does not include an area or conveyance at a vending machine location used for the temporary storage of packaged food or beverages.
4. "Department" means the state department of health.
5. "Food establishment" means any fixed restaurant, limited restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, catering kitchen, delicatessen, bakery, grocery store, meat market, food processing plant, or similar place in which food or drink is prepared for sale or service to the public on the premises or elsewhere with or without charge.

¹¹⁴ Section 23-09-01 was also amended by section 1 of House Bill No. 1164, chapter 429.

6. "Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer.
7. "Limited restaurant" means a food service establishment that is restricted to a specific menu as determined by the department or an establishment serving only prepackaged foods, such as frozen pizza and sandwiches, which receive no more than heat treatment and are served directly in the package or on single-serve articles.
8. "Lodging establishment" includes every building or structure, or any part thereof, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished for pay to four or more transient guests. The term does not include a facility providing personal care services directly or through contract services as defined in section 23-09.3-01 or 50-24.5-01.
9. "Mobile food unit" means a vehicle-mounted food service establishment designed to be readily movable.
10. "Proprietor" includes the person in charge of a food ~~or~~ establishment, lodging establishment, or assisted living facility, whether as owner, lessee, manager, or agent.
11. "Pushcart" means a non-self-propelled vehicle limited to serving nonpotentially hazardous food or commissary-wrapped food maintained at proper temperatures.
12. "Restaurant" includes every building or other structure, or any part thereof, and all buildings in connection therewith, that are permanently kept, used, maintained, advertised, or held out to the public as a place where meals or lunches are served, but where sleeping accommodations are not furnished. The term includes a limited restaurant restricted to a specified menu.
13. "Retail food store" means any establishment or section of an establishment where food and food products are offered to the consumer and intended for offpremise consumption. The term includes a delicatessen that offers prepared food in bulk quantities only. The term does not include an establishment that handles only prepackaged nonpotentially hazardous foods, roadside market that offers only fresh fruits and vegetables for sale, food service establishment, or food and beverage vending machine.
14. "Retail meat market" means a commercial establishment and buildings or structures connected with it, used to process, store, or display meat or meat products for retail sale to the public for human consumption. The term does not include a meat establishment operating under the federal or state meat inspection program.
15. "Salvage processing facility" means an establishment engaged in the business of reconditioning or by other means salvaging distressed merchandise for human consumption or use.
16. "Temporary food service establishment" means any food service establishment that operates at a fixed location for not more than

fourteen consecutive days. The term does not include a nonprofit public-spirited organization or person providing a limited type of food service as defined in chapter 23-09.2.

SECTION 3. AMENDMENT. Section 23-09-02.1 of the North Dakota Century Code is amended and reenacted as follows:

23-09-02.1. Smoke detection devices or other approved alarm systems - Administrative procedure and judicial review. Each lodging establishment and assisted living facility shall install smoke detection devices or other approved alarm systems of a type and in the number approved by the department, in cooperation with the state fire marshal. The department, in cooperation with the state fire marshal, shall adopt reasonable rules governing the spacing and minimum specifications for approved smoke detection devices or other approved alarm systems. The department and state fire marshal shall provide all reasonable assistance required in complying with the provisions of this section.

SECTION 4. AMENDMENT. Section 23-09-03 of the North Dakota Century Code is amended and reenacted as follows:

23-09-03. Exiting requirements. Every lodging establishment and assisted living facility constructed in the state shall have adequate exiting as defined by the state building code in chapter 54-21.3 with the following exceptions:

1. All lodging establishments and assisted living facilities in existence at the time of implementation of this section are required to continue with fire escapes previously provided for within this section providing that they are deemed adequate by the local fire authority having approval, or by the state fire marshal's office.
2. If the lodging establishment or assisted living facility is provided with exterior access balconies connecting the main entrance door of each unit to two stairways remote from each other.

SECTION 5. AMENDMENT. Section 23-09-05 of the North Dakota Century Code is amended and reenacted as follows:

23-09-05. Fire escapes to be kept clear - Notice of location and use of fire escapes required. Access to fire escapes required under this chapter must be kept free and clear at all times of all obstructions of any nature. The proprietor of the lodging establishment or assisted living facility shall provide for adequate exit lighting and exit signs as defined in the state building code, chapter 54-21.3.

SECTION 6. AMENDMENT. Section 23-09-06 of the North Dakota Century Code is amended and reenacted as follows:

23-09-06. Chemical fire extinguishers - Standpipes. Each lodging establishment or assisted living facility must be provided with fire extinguishers as defined by the national fire protection association standard number ten in quantities as defined by the state building code and the state fire code. Standpipe and sprinkler systems must be installed as required by the state building code and state fire code. Fire extinguishers, sprinkler systems, and standpipe systems must conform with rules adopted by the state fire marshal. A contract for sale or a sale of a fire extinguisher installation in a public building is not enforceable, if the fire extinguisher or extinguishing system is of a type not approved by the state fire

marshal for such installation. No fire extinguisher of a type not approved by the state fire marshal may be sold or offered for sale within the state.

SECTION 7. AMENDMENT. Section 23-09-07 of the North Dakota Century Code is amended and reenacted as follows:

23-09-07. Lodging establishments or assisted living facilities with elevators - Protection to prevent spread of fire. ~~After July 1, 1997, all~~ All new construction of, remodeling of, or additions to lodging establishments or assisted living facilities equipped with passenger or freight elevators must comply with state building code fire protection requirements.

SECTION 8. AMENDMENT. Section 23-09-09 of the North Dakota Century Code is amended and reenacted as follows:

23-09-09. Sanitation and safety. Every food ~~and~~ establishment, lodging establishment, and assisted living facility must be operated with strict regard for the health, safety, and comfort of its patrons. The following sanitary and safety regulations must be followed:

1. Every food ~~and~~ establishment, lodging establishment, and assisted living facility must be well constructed, drained, and provided with plumbing equipment according to established sanitary principles and must be kept free from effluvia arising from any sewerage, drain, privy, or other source within the control of the proprietor.
2. In municipalities in which a system of public water supply and sewerage is maintained, every food ~~and~~ establishment, lodging establishment, and assisted living facility must be equipped with suitable toilets for the accommodation of its guests, and such toilets must be ventilated and connected by proper means of flushing with the water of said system. All lavatories, bathtubs, sinks, drains, and toilets must be connected with such sewerage system and installed according to all applicable plumbing codes.
3. When a sewerage system is not available, open toilets must be located not less than forty feet [12.19 meters] from all kitchens, dining rooms, and pantry openings and must be properly cleaned, screened, and disinfected as often as may be necessary to keep them in a sanitary condition.
4. All garbage and kitchen refuse must be kept in watertight containers with tight-fitting covers to prevent decomposition. No dishwater or other substance which is or may become foul or offensive may be thrown upon the ground near any food ~~or~~ establishment, lodging establishment, or assisted living facility.
5. All bedrooms must be kept free from insects and rodents, and the bedding in use must be clean and sufficient in quantity and quality.
6. Each food ~~or~~ establishment, lodging establishment, or assisted living facility shall keep in its main public washroom and available at all hours individual disposable paper towels, a continuous towel system that supplies the user with a clean towel, or a heated air hand drying device for the use of its guests.

7. Bathrooms, toilet rooms, and laundry rooms must be provided with either natural or mechanical ventilation connected directly to the outside.
8. All food ~~or~~ establishments, lodging establishments, or assisted living facilities shall equip operable windows during the summer months with screens adequate to keep out insects.
9. Neither the dining room nor kitchen of any food ~~or~~ establishment, lodging establishment, or assisted living facility may be used as a sleeping or dressing room by any employee of the hotel or restaurant or by any other person.

SECTION 9. AMENDMENT. Section 23-09-10 of the North Dakota Century Code is amended and reenacted as follows:

23-09-10. Drinking water standards. Every person operating a food ~~or~~ establishment, lodging establishment, or assisted living facility shall see that the drinking water supplied therein is obtained from an approved source that is a public water system or a nonpublic water system that is constructed, maintained, and operated according to law.

SECTION 10. AMENDMENT. Section 23-09-11 of the North Dakota Century Code is amended and reenacted as follows:

23-09-11. Inspection - Reports. Every lodging establishment, food establishment, or assisted living facility must be inspected at least once every two years by the department. Food establishments and assisted living facilities must be inspected based on a system of risk categorization which involves types of foods served, the preparation steps these foods require, volume of food, population served, and previous compliance history. ~~Every food establishment must be inspected at least once every two years.~~ The department and its inspectors may enter any such establishment at reasonable hours to determine compliance with this chapter.

SECTION 11. AMENDMENT. Section 23-09-14 of the North Dakota Century Code is amended and reenacted as follows:

23-09-14. Department to report to state fire marshal. The department, before the sixth day of each month, shall report to the state fire marshal on all food ~~and~~ establishments, lodging establishments, or assisted living facilities inspected by the department during the preceding month, paying particular attention in the report to the violation of any provision of this chapter relating to fire escapes and the installation and maintenance of automatic or other fire alarms and fire extinguishing equipment and to any other condition that might constitute a fire hazard in the premises so inspected. If no such violation or condition is found, the report must so state.

SECTION 12. AMENDMENT. Section 23-09-16 of the North Dakota Century Code is amended and reenacted as follows:

23-09-16. License - Application. Before any food ~~or~~ establishment, lodging establishment, or assisted living facility may be operated in this state, it must be licensed by the department. The department shall waive the license requirement for any food ~~and~~ establishment, lodging establishment, or assisted living facility licensed by a city or district health unit. Application for license must be made to the department during December of every year, or before the operating of the food ~~or~~

establishment, lodging establishment, or assisted living facility, as the case may be. The application must be in writing on forms furnished by the department and must be accompanied by the required fee. An additional amount of fifty percent of the license fee must be imposed upon renewal if the license was not renewed before February first following the expiration date.

SECTION 13. AMENDMENT. Section 23-09-17 of the North Dakota Century Code is amended and reenacted as follows:

23-09-17. License fees. The following annual license fees must be paid to the department by proprietors of food ~~and~~ establishments, lodging establishments, or assisted living facilities:

1. For a lodging establishment containing not more than three sleeping rooms, twenty dollars.
2. For a lodging establishment containing at least four but not more than ten sleeping rooms, thirty dollars.
3. For a lodging establishment containing more than ten sleeping rooms and not more than twenty sleeping rooms, forty-five dollars.
4. For a lodging establishment containing more than twenty sleeping rooms and not more than fifty sleeping rooms, sixty dollars.
5. For a lodging establishment containing fifty-one sleeping rooms or more, eighty dollars.
6. For a restaurant ~~or boardinghouse~~ with a seating capacity of less than seventy-five, sixty dollars.
7. For a restaurant ~~or boardinghouse~~ with a seating capacity of seventy-five to not more than one hundred fifty, eighty dollars.
8. For a restaurant ~~or boardinghouse~~ with a seating capacity of more than one hundred fifty, eighty-five dollars.
9. For a limited restaurant, fifty dollars.
10. For a retail food store, retail meat market, or bakery with not more than five thousand square feet [464.52 square meters], fifty dollars.
11. For a retail food store, retail meat market, or bakery with more than five thousand square feet [464.52 square meters], sixty dollars.
12. For a bar or tavern dispensing beer, liquor, or alcoholic beverages, forty dollars.
13. For an establishment operating one or more mobile food units or pushcarts, fifty dollars.
14. For a salvaged food distributor, fifty dollars.
15. For a food processing plant, not licensed and inspected by any other federal or local health unit, twenty-five dollars.

16. For an assisted living facility, seventy-five dollars.

If a business operates more than one type of establishment on the same premises and under the same management, the department shall issue a single license stating the types of establishments the business is licensed for and the maximum license fee charged may not exceed seventy-five dollars for an establishment with not more than five thousand square feet [464.52 square meters] and one hundred fifty dollars for an establishment over five thousand square feet [464.52 square meters]. The department shall waive all or a portion of the license fee for any food ~~or~~ establishment, lodging establishment, or assisted living facility that is subject to a license fee by a city or district health unit if the local unit's sanitation, safety, and inspection rules are approved by the department. A reduced license fee in the amount of one-half the applicable license fee must be charged for a new food ~~and~~ establishment, lodging establishment, or assisted living facility beginning operations after July first of each year and for changes in ownership and location of such existing establishments after July first of each year.

SECTION 14. AMENDMENT. Section 23-09-18 of the North Dakota Century Code is amended and reenacted as follows:

23-09-18. Failure to comply with chapter - Notice - How served.

Whenever the proprietor of any food ~~or~~ establishment, lodging establishment, or assisted living facility fails to comply with this chapter, the proprietor must be given notice of the time within which the proprietor must meet the requirements. The notice must be in writing and delivered personally by an inspector of the department or sent by registered mail.

SECTION 15. AMENDMENT. Section 23-09-21 of the North Dakota Century Code is amended and reenacted as follows:

23-09-21. Penalty - General. Any person operating a food ~~or~~ establishment, lodging establishment, or assisted living facility in this state, or letting a building used for such business, without first having complied with this chapter, is guilty of a class B misdemeanor.

SECTION 16. AMENDMENT. Section 23-09-22 of the North Dakota Century Code is amended and reenacted as follows:

23-09-22. License canceled. Whenever the proprietor of a food ~~or~~ establishment, lodging establishment, or assisted living facility has been convicted of a violation of this chapter and for a period of ten days after the conviction fails to comply with any provision of this chapter, the department may cancel the proprietor's license.

SECTION 17. AMENDMENT. Section 50-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

50-10.1-01. Definitions. As used in this chapter:

1. "Administrative action" means any action or decision made by an owner, employee, or agent of a long-term care facility, or by a public agency, which affects the provision of services to a resident of a long-term care facility.
2. "Department" means the department of human services.

3. "Long-term care facility" means any skilled nursing facility, ~~intermediate care facility~~, basic care facility, nursing home as defined in subsection 3 of section 43-34-01, ~~boardinghouse~~ assisted living facility, or swing bed hospital approved to furnish long-term care services; provided, that a facility, as defined by subsection 2 of section 25-01.2-01, providing services to developmentally disabled persons is not a long-term care facility.
4. "Resident" means a person residing in and receiving personal care from a long-term care facility.

SECTION 18. AMENDMENT. Section 50-10.2-01 of the North Dakota Century Code is amended and reenacted as follows:

50-10.2-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Conflict of interest" means any type of ownership in a facility or membership on the governing body of a facility by a provider of goods or services to that facility or by a member of that person's immediate family.
2. "Department" means the department of human services.
3. "Facility" means a skilled nursing care facility, ~~intermediate care facility~~, basic care facility, ~~boardinghouse~~ assisted living facility, or swing bed hospital approved to furnish long-term care services.
4. "Immediate family" means husband, wife, father, mother, brother, sister, son, daughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, stepchild, uncle, aunt, niece, nephew, or grandchild.
5. "Remodeling" means any alteration in structure, refurbishing, or repair that would:
 - a. Prevent the facility staff from providing customary and required care; or
 - b. Seriously endanger or inconvenience any resident with noise, dust, fumes, inoperative equipment, or the presence of workmen.
6. "Resident" means a person residing in a facility.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 215**HOUSE BILL NO. 1121**

(Human Services Committee)

(At the request of the State Department of Health)

FOOD AND LODGING REGULATION ENFORCEMENT

AN ACT to amend and reenact section 23-09-02 of the North Dakota Century Code, relating to enforcement of food and lodging regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-09-02 of the North Dakota Century Code is amended and reenacted as follows:

23-09-02. State department of health to enforce provisions of chapter.

The department shall enforce the provisions of this chapter. Under no circumstances may any other state agency ~~enforce the provisions of this chapter or~~ adopt rules ~~which~~ that relate in any way to the provisions of this chapter ~~nor may any other state agency expend any moneys, including salaries, which would involve the agency or its employees in work related to the provisions of this chapter.~~

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 216

HOUSE BILL NO. 1400

(Representatives Devlin, Boucher, Nelson, Price)
(Senators Fischer, J. Lee)

BASIC AND LONG-TERM CARE BED MORATORIUM

AN ACT to amend and reenact sections 23-09.3-01.1 and 23-16-01.1 of the North Dakota Century Code, relating to a moratorium on expansion of the licensed basic care and long-term bed capacity, the conversion of beds, and the transfer of existing basic care beds from one municipality to another municipality or to a tribal reservation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-09.3-01.1 of the North Dakota Century Code is amended and reenacted as follows:

23-09.3-01.1. Moratorium on expansion of basic care bed capacity.

1. Except when a nursing facility that converts licensed nursing facility bed capacity to basic care bed capacity or the alzheimer's and related dementia pilot projects established under section 50-06-14.4 requests licensure of the facility's existing beds as basic care bed capacity, or unless the applicant demonstrates to the department and to the department of human services that a need for additional basic care bed capacity exists, the department may not issue a license under this chapter for any additional bed capacity above the state's gross licensed capacity of one thousand four hundred seventy-one beds, adjusted by any reduction in beds before July 31, ~~2004~~ 2003, during the period between August 1, ~~2004~~ 2003, and July 31, ~~2003~~ 2007.
2. Transfers of existing beds from one municipality to another municipality must be approved if the licensing requirements are met, during the period August 1, ~~2004~~ 2003, to July 31, ~~2003~~, ~~only to the extent that for each bed transfer approved the total number of licensed beds in the state is reduced by the same number transferred~~ 2007. Existing licensed beds released by a facility and transferred to another facility must become licensed within ~~twenty-four~~ forty-eight months of transfer.
3. Transfer of existing beds from one municipality to a tribal reservation during the period August 1, ~~2004~~ 2003, to July 31, ~~2003~~ 2007, may occur, only to the extent that the facility transferring beds reduces the facility's licensed capacity by an amount equal to ~~twice~~ the number of beds transferred. A tribal facility may seek to participate, within ~~twenty-four~~ forty-eight months of any transfer of beds, in the basic care assistance program. Basic care assistance payments may only be made to a tribal facility that agrees to participate and adhere to all federal and state requirements of the basic care assistance program including participation, screening, ratesetting, and licensing requirements.

4. Not more than once in a twelve-month period, a nursing facility may convert licensed nursing facility bed capacity to basic care bed capacity or may convert basic care bed capacity licensed after July 1, 2001, as nursing facility capacity to licensed nursing facility bed capacity. At least ninety days before the conversion, the facility shall notify the state department of the facility's intent to convert bed capacity. ~~The converted beds must be located in the same block of rooms within the facility.~~

SECTION 2. AMENDMENT. Section 23-16-01.1 of the North Dakota Century Code is amended and reenacted as follows:

23-16-01.1. Moratorium on expansion of long-term care bed capacity.

1. Notwithstanding sections 23-16-06 and 23-16-10, except when existing beds are converted for use by the alzheimer's and related dementia population under the projects provided for in section 50-06-14.4 or when a nursing facility converts basic care bed capacity licensed after July 1, 2001, as nursing facility capacity to nursing facility bed capacity, the state department of health may not issue a license for any additional bed capacity above the state's gross licensed capacity of seven thousand one hundred forty beds, adjusted by any reduction in beds before July 31, ~~2004~~ 2003, during the period between August 1, ~~2004~~ 2003, and July 31, ~~2003~~ 2007.
2. Transfers of existing beds from one municipality to another municipality must be approved if the state department of health licensing requirements are met, during the period August 1, ~~2004~~ 2003, to July 31, ~~2003~~, ~~only to the extent that for each bed transfer approved the total number of licensed beds in the state is reduced by the same number transferred~~ 2007. Existing licensed beds released by a facility and transferred to another facility must become licensed within ~~twenty-four~~ forty-eight months of transfer.
3. Transfer of existing beds from one municipality to a tribal reservation during the period August 1, ~~2004~~ 2003, to July 31, ~~2003~~ 2007, may occur, only to the extent that the facility transferring beds reduces the facility's licensed capacity by an amount equal to ~~twice~~ the number of beds transferred. A tribal facility may seek to participate, within ~~twenty-four~~ forty-eight months of any transfer of beds, in the medical assistance program. Medical assistance payments may only be made to a medicaid-certified tribal facility that agrees to participate and adhere to all federal and state requirements of the medical assistance program including participation, screening, ratesetting, and licensing requirements.

4. Not more than once in a twelve-month period, a nursing facility may convert licensed nursing facility bed capacity to basic care bed capacity or may convert basic care bed capacity licensed after July 1, 2001, as nursing facility capacity to licensed nursing facility bed capacity. At least ninety days before the conversion, the facility shall notify the state department of health of the facility's intent to convert bed capacity. ~~The converted beds must be located in the same block of rooms within the facility.~~

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 217**SENATE BILL NO. 2272**

(Senators Dever, Fischer, Kilzer, J. Lee)
(Representatives Meier, Porter)

X-RAY OPERATOR RULES

AN ACT to create and enact a new section to chapter 23-20.1 of the North Dakota Century Code, relating to x-ray operators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-20.1 of the North Dakota Century Code is created and enacted as follows:

X-ray operators - Rules. The health council shall adopt rules, to become effective August 1, 2006, to require that x-ray operators obtain continuing education every two years and to establish minimum standards for x-ray operator provision of limited pediatric examinations.

Approved March 21, 2003

Filed March 21, 2003

CHAPTER 218

HOUSE BILL NO. 1306

(Representatives Severson, Delmore, Porter, Uglen)
(Senators Klein, Krebsbach)

EMS MISREPRESENTATION PENALTY

AN ACT to amend and reenact section 23-27-04.3 of the North Dakota Century Code, relating to misrepresentation as to status as an emergency medical services personnel; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-27-04.3 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04.3. Emergency medical services personnel training, testing, certification, licensure, and quality review - Penalty. The state health council shall adopt rules prescribing minimum training, testing, certification, licensure, and quality review standards for emergency medical services personnel. Rules adopted must include a definition of minimum applicable standards, a definition of emergency medical services personnel, provide for a mechanism for certifying or licensing persons who have met the required standards, and provide a mechanism to review and improve the quality of care rendered by emergency medical services personnel. It is a class B misdemeanor for an individual to willfully misrepresent that individual's certification or licensing status as an emergency medical services personnel. Quality review and improvement information, data, records, and proceedings are not subject to subpoena or discovery or introduction into evidence in any civil action.

Approved March 19, 2003
Filed March 19, 2003

CHAPTER 219**HOUSE BILL NO. 1480**

(Representatives Severson, Drovdal, Gullekson, Warner)
(Senators Every, Trenbeath)

QUICK-RESPONSE UNITS

AN ACT to create and enact a new section to chapter 23-27 of the North Dakota Century Code, relating to quick-response units.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 23-27 of the North Dakota Century Code is created and enacted as follows:

Quick-response units. Notwithstanding contrary licensing and certification requirements under this chapter, department licensure or certification as a quick-response unit is optional.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 220

SENATE BILL NO. 2297

(Senators Fischer, Dever, J. Lee)
(Representatives Delmore, Hawken, Price)

COMMUNITY HEALTH GRANT PROGRAM

AN ACT to amend and reenact section 23-38-02 of the North Dakota Century Code, relating to the community health grant program; to provide for an appropriation; and to provide for an exemption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-38-02 of the North Dakota Century Code is amended and reenacted as follows:

23-38-02. Community health grant program advisory committee - Duties of state health officer.

1. The state health officer shall establish a community health grant program advisory committee and shall appoint, after consulting with the governor, appropriate members to advise the state department of health in the development of a community health grant program. The state health officer, who ~~shall be~~ is the chairman of the committee, shall appoint to the committee the state tobacco control administrator; one high school student; one student of a postsecondary institution in the state; one representative of a nongovernmental tobacco control organization; and one law enforcement officer. In addition to the members appointed by the state health officer, the committee must include:
 - a. One individual appointed by the North Dakota Indian affairs commission;
 - b. One individual appointed by the North Dakota public health association;
 - c. The superintendent of public instruction or the superintendent's designee;
 - d. An academic researcher with expertise in tobacco control and health promotion intervention, appointed by the dean of the university of North Dakota school of medicine and health sciences; and
 - e. One physician appointed by the North Dakota medical association.
2. Members of the committee who are not state employees or officers are entitled to be compensated at a rate of sixty-two dollars and fifty cents per day and are entitled to mileage and expenses as provided by law for state officers and employees. A state employee who is a member of the committee must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency.

3. The state department of health, with the committee's involvement, shall provide assistance to:
 - a. Evaluate programs;
 - b. Promote media advocacy by working with statewide media associations;
 - c. Implement smoke-free policies by involving antitobacco groups in promoting the need for smoke-free public buildings;
 - d. Work to reduce minors' access to tobacco in all communities;
 - e. Facilitate the coordination of program components with the local level;
 - f. Involve state agencies, law enforcement, and local government in the administration and management of the program; and
 - g. Assist the state in screening and implementing the grants.
4. The state health officer shall monitor the implementation of the community health grant program. The state health officer shall provide ~~reports~~ a report to the legislative council regarding the implementation of the program not later than ~~December 31, 2001, and November 4, 2002~~ September 30, 2004. Upon request, the state health officer shall provide assistance to any interim legislative committee that may study the implementation of the community health grant program and shall recommend any legislation that the community health grant program advisory committee considers appropriate to improve the community health grant program.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the community health trust fund, not otherwise appropriated, the sum of \$100,000, or so much of the sum as may be necessary, to the state department of health for the purpose of funding the community health grant program advisory committee, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 3. APPROPRIATION. There is appropriated out of any moneys in the community health trust fund, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the state department of health for the purpose of funding grants to cities and counties with a one dollar local match for every three dollars of state funds for city and county employee tobacco education and cessation programs and for the purpose of funding state employee tobacco education and cessation programs, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 4. EXEMPTION. The appropriation contained in section 5 of chapter 250 of the 2001 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available, in addition to any other moneys appropriated, for grants for the purpose of funding city, county, and state employee tobacco education and cessation programs under section 3 of this Act, for the biennium beginning July 1, 2003, and ending June 30, 2005.

HIGHWAYS, BRIDGES, AND FERRIES

CHAPTER 221

HOUSE BILL NO. 1113

(Transportation Committee)

(At the request of the Department of Transportation)

HIGHWAY CONTRACT ELECTRONIC BIDDING

AN ACT to amend and reenact section 24-02-17 of the North Dakota Century Code, relating to bidding of highway contracts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-02-17 of the North Dakota Century Code is amended and reenacted as follows:

24-02-17. Contracts - Bids. Whenever the cost of any construction improvement exceeds the sum of twenty thousand dollars, the department shall proceed to advertise the same, request bids, and award such contracts in the manner provided in this chapter. The department may accept bids and bid bonds that are submitted by electronic media such as the internet. The director may adopt the procedures and rules necessary to implement this section.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on January 1, 2004.

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 222**HOUSE BILL NO. 1031**

(Legislative Council)

(Budget Committee on Government Administration)

HIGHWAY SYSTEM COOPERATIVE AGREEMENTS

AN ACT to create and enact a new section to chapter 24-02 of the North Dakota Century Code, relating to department of transportation cooperative agreements with counties or cities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 24-02 of the North Dakota Century Code is created and enacted as follows:

Cooperative agreements with counties or cities. The director may enter an agreement with a county or city for the cooperative or joint administration of an activity that will enhance the efficiency and effectiveness of the state highway system. The terms of the agreement supersede sections 24-02-36 and 24-02-37 or any other state law governing the use of state, county, or city highway funds.

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 223**HOUSE BILL NO. 1278**
(Representatives Hawken, Wieland)
(Senators Nething, Trenbeath)**ROAD ACCESS TO ISOLATED TRACTS**

AN ACT to amend and reenact section 24-07-06 of the North Dakota Century Code, relating to establishment of public road access to isolated tracts of land.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 24-07-06 of the North Dakota Century Code is amended and reenacted as follows:

24-07-06. ~~Highway or cartway~~ Public road may be established to give access to highway. Whenever any tract of land is surveyed or sold in tracts less than the original subdivision as established by the government survey thereof, so that any part thereof does not touch upon a public road so as to allow the owner of such tract access to a public highway, the board of county commissioners or board of township supervisors, upon petition of such owner, may open a ~~cartway or highway~~ public road ~~along the lines of public road to gain access to~~ any such tract or tracts when in the judgment of such board such ~~cartway or highway~~ public road is necessary and that it is of sufficient benefit to the county or township as a whole, but no such ~~cartway or highway~~ public road may exceed two rods [10.06 meters] in width unless in the judgment of such board a roadway of such width is not sufficient to accommodate the travel thereon.

Approved April 11, 2003

Filed April 11, 2003

MENTAL AND PHYSICAL ILLNESS OR DISABILITY

CHAPTER 224

SENATE BILL NO. 2296

(Senators Mathern, Lyson, Nelson, Grindberg)
(Representatives DeKrey, Ruby)

MENTAL ILLNESS COMMITMENT PROCEDURES

AN ACT to amend and reenact section 25-03.1-02 and subsection 1 of section 25-03.1-18.1 of the North Dakota Century Code, relating to mental illness commitment procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁵ **SECTION 1. AMENDMENT.** Section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-02. Definitions. In this chapter, unless the context requires otherwise:

1. "Alternative treatment order" means an involuntary outpatient order for a treatment program, other than hospitalization, which may include treatment with a prescribed medication.
2. "Chemically dependent person" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
- ~~2.~~ 3. "Consent" means voluntary permission that is based upon full disclosure of facts necessary to make a decision and which is given by an individual who has the ability to understand those facts.
- ~~3.~~ 4. "Court" means, except when otherwise indicated, the district court serving the county in which the respondent resides.
4. 5. "Department" means the department of human services.
- ~~5.~~ 6. "Director" means the director of a treatment facility or the director's designee.

¹¹⁵ Section 25-03.1-02 was also amended by section 1 of House Bill No. 1165, chapter 432.

- ~~6.~~ 7. "Expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the respondent is a person requiring treatment. An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist, an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist trained in a clinical program, and an evaluation of whether the respondent is chemically dependent may be made only by a licensed physician or licensed addiction counselor.
- ~~7.~~ 8. "Independent expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent is a person requiring treatment. An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist; an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist; and an evaluation of whether the respondent is chemically dependent may be made only by a licensed physician or licensed addiction counselor.
- ~~8.~~ 9. "Magistrate" means the judge of the appropriate district or juvenile court or a judge assigned by the presiding judge of the judicial district.
- ~~9.~~ 10. "Mental health professional" means:
- a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
 - b. A social worker with a master's degree in social work from an accredited program.
 - c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
 - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as defined by subdivision c or of an expert examiner.
 - e. A licensed addiction counselor.
 - f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond the master's degree as required by the national academy of mental health counselors or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.
- ~~10.~~ 11. "Mentally ill person" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include a mentally retarded person of significantly subaverage general intellectual

functioning which originates during the developmental period and is associated with impairment in adaptive behavior, although a person who is mentally retarded may also suffer from a mental illness. Chemical dependency does not per se constitute mental illness, although persons suffering from that condition may also be suffering from mental illness.

- 44- 12. "Person requiring treatment" means a person who is mentally ill or chemically dependent, and there is a reasonable expectation that if the person is not treated there exists a serious risk of harm to that person, others, or property. "Serious risk of harm" means a substantial likelihood of:
- a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;
 - b. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;
 - c. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or
 - d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the person's thoughts or actions or based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors, including the effect of the person's mental condition on the person's ability to consent.
- 42- 13. "Private treatment facility" means any facility established under chapter 10-19.1 or 10-33 and licensed under chapter 23-16 or 23-17.1.
- 43- 14. "Psychiatrist" means a licensed physician who has completed a residency program in psychiatry.
- 44- 15. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.
- 45- 16. "Qualified service organization" means a person or entity that provides services to a treatment facility such as data processing, bill collecting, dosage preparation, laboratory analysis, or legal, medical, accounting, or other professional services, and which agrees that in dealing with patient records, it is bound by the confidentiality restrictions of this chapter, except as otherwise provided for by law.
- 46- 17. "Respondent" means a person subject to petition for involuntary treatment.
- 47- 18. "Superintendent" means the state hospital superintendent or the superintendent's designee.
- 48- 19. "Third-party payer" means a person or entity who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a

contractual relationship with the patient or a member of the patient's family, or on the basis of the patient's eligibility for federal, state, or local governmental benefits, and includes any person or entity providing audit or evaluation activities for the third-party payer.

- ~~19.~~ 20. "Treatment facility" or "facility" means any hospital including the state hospital at Jamestown or any evaluation and treatment facility that provides directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to persons suffering from a mental disorder or chemical dependency.

SECTION 2. AMENDMENT. Subsection 1 of section 25-03.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Upon notice and hearing, a treating psychiatrist may request authorization from the court to treat a person under a mental health treatment order with prescribed medication. The request may be considered by the court in an involuntary treatment hearing. As a part of the request, the treating psychiatrist and another licensed physician or psychiatrist not involved in the current diagnosis or treatment of the patient shall certify:
 - (1) That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and ~~there is a reasonable expectation that if the person is not treated as proposed there exists a serious risk of harm to that person, other persons, or property~~ that the patient is a person requiring treatment;
 - (2) That the patient was offered that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about that treatment;
 - (3) That prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and
 - (4) That the benefits of the treatment outweigh the known risks to the patient.
- b. The court shall inquire whether the patient has had a sufficient opportunity to adequately prepare to meet the issue of involuntary treatment with prescribed medication and, at the request of the patient, the court may continue the involuntary treatment hearing for a period not exceeding seven days or may appoint an independent expert examiner as provided in subsection 4.

Approved April 9, 2003
Filed April 9, 2003

CHAPTER 225

HOUSE BILL NO. 1163

(Human Services Committee)

(At the request of the Department of Human Services)

MENTAL ILLNESS TREATMENT DISCLOSURE

AN ACT to create and enact section 25-03.1-03.1 of the North Dakota Century Code, relating to disclosure of health information for treatment of mental illness; to amend and reenact section 25-03.1-10, subsection 1 of section 25-03.1-13, section 25-03.1-43, and subsection 20 of section 43-17-31 of the North Dakota Century Code, relating to civil commitment for treatment of mental illness and substance abuse and a physician's duty to transfer medical records; to repeal section 25-03.1-44 of the North Dakota Century Code, relating to accounting for the disclosure of health information of an individual committed for the treatment of mental illness; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 25-03.1-03.1 of the North Dakota Century Code is created and enacted as follows:

25-03.1-03.1. Disclosure of health information. A treating facility or mental health professional may disclose individually identifiable health information to a court, regional human service center, state's attorney, retained counsel, or other mental health professional, including an expert examiner, and the disclosure is not a disclosure for treatment, including the provision, coordination, and management of health care and to carry out the purposes of chapter 25-03.1.

SECTION 2. AMENDMENT. Section 25-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-10. Involuntary treatment - Court-ordered examination. If the petition is not accompanied by a written supportive statement of a psychiatrist, physician, or psychologist who has examined the respondent within the last forty-five days, the court shall order the respondent to be examined by an expert examiner of the respondent's own choice or one appointed by the court. The order must state the date and time within which the respondent must appear; the address to which the respondent is to report; ~~and~~; a statement that if the respondent fails to appear at the appointed place at or before the ordered date and time, the respondent may be involuntarily taken into custody and transported to the appointed place; and a statement that the expert examiner may consult with or request participation in the examination by a qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. Accompanying the order must be an explanation of the intended uses and possible effects of this examination. The examination may be conducted at a treatment facility, at the respondent's home, or at any other suitable place in the community. A request for examination at the state hospital must be screened and approved by a regional human service center. The respondent may be accompanied by one or more relatives or friends at the place of the examination. The costs of the court-ordered examination must be borne by the county that is the respondent's place of residence.

SECTION 3. AMENDMENT. Subsection 1 of section 25-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

1. Every respondent under this chapter is entitled to legal counsel. The counsel has access to the respondent's medical records upon proof of representation.

SECTION 4. AMENDMENT. Section 25-03.1-43 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-43. Confidential records. All information and records obtained in the course of an investigation, an evaluation, an examination, or treatment under this chapter and the presence or past presence of a patient in a treatment facility ~~must be kept confidential and not as public records, except as the requirements of a hearing under this chapter may necessitate a different procedure.~~ All information and records are available to the court and, under rules established by the department, may be disclosed only to:

1. ~~Physicians and providers of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient to whom the patient has given written consent to have information disclosed.~~
2. ~~Individuals to whom the patient has given written consent to have information disclosed.~~
3. ~~Persons legally representing the patient, including attorneys representing the patient in commitment proceedings, upon proper proof of representation.~~
4. ~~Persons authorized by a court order.~~
5. ~~Persons doing research or maintaining health statistics, if the anonymity of the patient is assured and the facility recognizes the project as a bona fide research or statistical undertaking.~~
6. ~~The department of corrections and rehabilitation in cases in which prisoners sentenced to the state prison are patients in the state hospital on authorized transfers either by voluntary admissions or by court order.~~
7. ~~Governmental or law enforcement agencies when necessary to secure the return of a patient who is absent without authorization from the facility where the patient was undergoing evaluation or treatment, or when necessary to report a crime committed on facility premises or against facility staff or patients, or threats to commit such a crime. The disclosures must be directly related to a patient's commission of a crime or threats to commit such a crime and are limited to the circumstances of the incident, the name and address of the patient involved, and the patient's last-known whereabouts.~~
8. ~~Qualified service organizations and third-party payers to the extent necessary to perform their functions.~~
9. ~~Victims and witnesses of a crime to the extent necessary to comply with the notification requirements of subsection 16 of section 12.1-34-02.~~

40. ~~Law enforcement agencies to confirm and investigate the address of a person required to register under section 12.1-32-15.~~

are confidential, but the information and records may be disclosed to and be used by a court as required to carry out the purposes of this chapter, and as authorized under title 45, Code of Federal Regulations, part 164. Any information disclosed to a court remains confidential information.

SECTION 5. AMENDMENT. Subsection 20 of section 43-17-31 of the North Dakota Century Code is amended and reenacted as follows:

20. The failure to transfer medical records; ~~except those relating to psychiatric treatment which must be governed by board rule;~~ to another physician or to supply copies ~~thereof~~ of those records to the patient or to the patient's representative when requested to do so by the patient or the patient's designated representative, except if the disclosure is otherwise limited or prohibited by law. A reasonable charge for record copies may be assessed.

SECTION 6. REPEAL. Section 25-03.1-44 of the North Dakota Century Code is repealed.

SECTION 7. EFFECTIVE DATE. This Act becomes effective on April 14, 2003.

SECTION 8. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 226**SENATE BILL NO. 2345**

(Senator Trenbeath)

**SCREENING FOR PUBLIC TREATMENT FACILITY
ADMISSIONS**

AN ACT to amend and reenact section 25-03.1-04 of the North Dakota Century Code, relating to the preparation of health care directives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-04 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-04. Screening and admission to a public treatment facility.

Under rules adopted by the department, screening and admission of an individual to a public treatment facility for observation, diagnosis, care, or treatment for mental illness or chemical dependency must be performed by a regional human service center. This screening must be performed in the region where the individual is physically located. Upon the request of a court, a law enforcement official, a qualified mental health professional, the individual's legal guardian, a minor's parent or legal custodian, or the individual requesting services, the regional human service center shall conduct a screening. If a request for screening is made by a qualified mental health professional and the individual that is the subject of the screening does not authorize the disclosure of the individual's protected health information, upon the request of the regional human service center, any mental health professional who has treated the individual within the previous six months shall disclose, subject to the requirements of title 42, Code of Federal Regulations, part 2, to the human service center any relevant protected health information regarding that treatment. Upon receipt of the request, the regional human service center shall arrange for a screening of the individual and must, if appropriate, treat the applicant, or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or director shall immediately designate a physician, psychiatrist, psychologist, or mental health professional to examine the individual.

Approved April 24, 2003

Filed April 24, 2003

CHAPTER 227

SENATE BILL NO. 2045

(Legislative Council)
(Judiciary A Committee)

INVOLUNTARY TREATMENT AND COMMITMENT PROCEDURES

AN ACT to amend and reenact sections 25-03.1-11 and 25-03.1-19 and subsection 2 of section 25-03.1-26 of the North Dakota Century Code, relating to involuntary treatment and commitment procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-11. Involuntary treatment - Examination - Report.

1. The respondent must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody under the emergency treatment provisions of this chapter, the examination must be conducted within twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting an examination under this section may consult with or request participation in the examination by any qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. This examination report, and that of the independent examiner, if one has been requested, must be filed with the court. The report must contain:

- ~~1.~~ a. Evaluations of the respondent's physical condition and mental status.
- ~~2.~~ b. A conclusion as to whether the respondent is a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation.
- ~~3.~~ c. If the report concludes that the respondent is a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
- ~~4.~~ d. The signature of the examiner who prepared the report.

2. If the expert examiner concludes that the respondent is not a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes that the respondent is a person requiring treatment, or makes no conclusion thereon, the court shall set a date for hearing and shall give notice of hearing to the persons designated in section 25-03.1-12. If the respondent is in custody and is alleged to be suffering from mental illness or a combination of mental illness and chemical

dependency, the preliminary hearing date must be within ~~seven~~ four days, exclusive of weekends and holidays, of the date respondent was taken into custody through emergency commitment under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If a preliminary hearing is not required, the treatment hearing must be held within ~~seven~~ four days, exclusive of weekends and holidays, of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served.

SECTION 2. AMENDMENT. Section 25-03.1-19 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-19. Involuntary treatment hearing. The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, must be held within fourteen days of the preliminary hearing. If the preliminary hearing is not required, the involuntary treatment hearing must be held within ~~seven~~ four days, exclusive of weekends and holidays, of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served. The court may extend the time for hearing for good cause. The respondent has the right to an examination by an independent expert examiner if so requested. If the respondent is indigent, the county of residence of the respondent shall pay for the cost of the examination and the respondent may choose an independent expert examiner.

The hearing must be held in the county of the respondent's residence or location or the county where the state hospital or treatment facility treating the respondent is located. At the hearing, evidence in support of the petition must be presented by the state's attorney, private counsel, or counsel designated by the court. During the hearing, the petitioner and the respondent must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person. All persons not necessary for the conduct of the proceeding must be excluded, except that the court may admit persons having a legitimate interest in the proceeding. The hearing must be conducted in as informal a manner as practical, but the issue must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure are available to the respondent. The court shall receive all relevant and material evidence which may be offered as governed by the North Dakota Rules of Evidence. There is a presumption in favor of the respondent, and the burden of proof in support of the petition is upon the petitioner.

If, upon completion of the hearing, the court finds that the petition has not been sustained by clear and convincing evidence, it shall deny the petition, terminate the proceeding, and order that the respondent be discharged if the respondent has been hospitalized before the hearing.

SECTION 3. AMENDMENT. Subsection 2 of section 25-03.1-26 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon receipt of the petition and notice of the emergency detention, the magistrate shall set a date for a preliminary hearing, if the respondent is alleged to be suffering from mental illness or from a combination of mental illness and chemical dependency, or a treatment hearing, if the respondent is alleged to be suffering from chemical dependency, to be held no later than ~~seven~~ four days, exclusive of weekends and holidays, after detention unless the person has been released as a person not requiring treatment, has been voluntarily admitted for treatment, has requested or agreed to a continuance, or unless the hearing has been extended by the magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

Approved April 18, 2003

Filed April 18, 2003

CHAPTER 228**SENATE BILL NO. 2070**

(Judiciary Committee)

(At the request of the Department of Human Services)

INTERSTATE TREATMENT CONTRACTS

AN ACT to create and enact a new section to chapter 25-03.1 of the North Dakota Century Code, relating to interstate contracts for the treatment of individuals with mental illness or chemical dependency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-03.1 of the North Dakota Century Code is created and enacted as follows:

Interstate contracts for treatment of mental illness or chemical dependency.

1. For purposes of this section, "bordering state" means Minnesota, Montana, or South Dakota.
2. Unless prohibited by another law and subject to the exceptions in subsection 3, the department may contract with any appropriate treatment facility in a bordering state for the treatment of mental illness or chemical dependency for residents of North Dakota. The department may also contract with any public or private agency or facility to provide treatment of mental illness or chemical dependency in North Dakota to residents of a bordering state. An individual who receives treatment for mental illness or chemical dependency in another state under this section is subject to the laws of the state in which treatment is provided. An individual who receives treatment in another state under this section must be informed of the consequences of receiving treatment in another state, including the implications of the differences in state laws.
3. A contract may not be entered under this section for treatment to individuals who:
 - a. Are serving a sentence after conviction of a criminal offense;
 - b. Are on probation or parole;
 - c. Are the subject of a presentence investigation; or
 - d. Have been committed involuntarily in North Dakota under chapter 25-03.1 for treatment of mental illness or chemical dependency, except as provided under subsection 5.
4. Contracts entered under this section must, at a minimum:
 - a. Describe the services to be provided;
 - b. Establish responsibility for the costs of services;

- c. Establish responsibility for the costs of transporting individuals receiving services under this section;
 - d. Specify the duration of the contract;
 - e. Specify the means of terminating the contract;
 - f. Specify the terms and conditions for refusal to admit or retain an individual; and
 - g. Identify the goals to be accomplished by the placement of an individual under this section.
5. The department may enter negotiations with appropriate personnel of a bordering state to develop an agreement that conforms to the requirements of this section. An agreement with a bordering state must enable the placement in North Dakota of individuals who are on emergency holds or who have been involuntarily committed as mentally ill or chemically dependent in a bordering state and enable the temporary placement in a bordering state of patients who are on emergency holds in North Dakota under chapter 25-03.1. An agreement with a bordering state must also provide that the North Dakota courts retain jurisdiction over North Dakota residents, and that the bordering state affords to North Dakota residents the rights afforded to them under North Dakota law. Individuals committed by a court of a bordering state and placed in North Dakota facilities continue to be in the legal custody of the bordering state. The bordering state's laws governing length of commitment, reexaminations, and extension of commitment must continue to apply to these residents. In all other respects, residents of a bordering state placed in North Dakota facilities are subject to North Dakota laws. An agreement with a bordering state must specify that responsibility for payment for the cost of care of a resident of a bordering state remains with the bordering state of which that individual is a resident and the cost of care of a North Dakota resident remains with the state of North Dakota.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 229**HOUSE BILL NO. 1228**
(Representatives Maragos, Keiser)
(Senators Espegard, Seymour)**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 continuing a moratorium on the expansion of residential treatment center for children and residential child care facility or group home bed capacity; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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 June 30, ~~2003~~ 2005) 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, ~~1999~~ 2003.

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 June 30, ~~2003~~ 2005) 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, ~~1999~~ 2003.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 2005, and after that date is ineffective.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 7, 2003
Filed March 7, 2003

CHAPTER 230

HOUSE BILL NO. 1425

(Representatives Galvin, Grande)
(Senator Tollefson)

DEVELOPMENTALLY DISABLED RECORD CONFIDENTIALITY

AN ACT to amend and reenact section 25-16-07 of the North Dakota Century Code, relating to the disclosure of individual records of a treatment or care center for developmentally disabled individuals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹⁶ **SECTION 1. AMENDMENT.** Section 25-16-07 of the North Dakota Century Code is amended and reenacted as follows:

25-16-07. Records of treatment or care center confidential. ~~No~~ An agent of the department of human services or the superintendent of the developmental center at westwood park, Grafton or the licensee or their agents or employees may not disclose the contents of the individual records of a treatment or care center for developmentally disabled ~~persons~~ individuals, nor of the reports received ~~therefrom~~ from those records, except:

1. In a judicial proceeding when ordered by the presiding judge;
2. To officers of the law or any other legally constituted boards or agencies serving the interests of the residents; ~~or~~
3. To the parents or legal guardians of the resident; ~~;~~
4. To a physician to aid in the treatment of an individual within the fourth degree of consanguinity of a deceased resident, if the disclosure is limited to genetic health information that has a direct bearing on the health of the relative, the relative's child, or the relative's decision to have a child; or
5. To an individual who is within the fourth degree of consanguinity of a deceased resident, if the disclosure is limited to information about a resident needed to establish a family's genealogy.

Approved April 21, 2003
Filed April 21, 2003

¹¹⁶ Section 25-16-07 was also amended by section 16 of House Bill No. 1438, chapter 211.

CHAPTER 231**SENATE BILL NO. 2086**

(Human Services Committee)

(At the request of the Department of Human Services)

DEVELOPMENTAL DISABILITY CARE FEES

AN ACT to create and enact a new chapter to title 25 of the North Dakota Century Code, relating to implementation of a fee for service ratesetting system for payment to treatment or care centers for individuals with developmental disabilities; to repeal sections 25-16-10, 25-16-10.1, 25-16-15, 25-16-16, and 50-06-18 of the North Dakota Century Code, relating to the purchase of services provided to individuals with developmental disabilities and allowing providers of services to individuals with developmental disabilities to transfer funds between budget categories and line items; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 25 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the department of human services.
2. "Fee for service" means a prospective rate based on allowable historical costs established by the department for payment of services provided to individuals with developmental disabilities by a treatment or care center.
3. "Historical operating costs" means the allowable costs of operating a treatment or care center during the reporting year in compliance with licensing standards prescribed by the department but does not include an annual return on investment in fixed assets related to client care.
4. "Treatment or care center" means an entity providing services to individuals with developmental disabilities and licensed by the department as an intermediate care facility for the mentally retarded as defined in the section 1905(d) of the Social Security Act [42 U.S.C. § 1396d(d)]; group home; or a provider of day supports, supported living arrangement, extended services, or infant development services.

Workgroup - Membership - Facilitator. A workgroup composed of one voting member appointed by the governor, three voting members from the department who are selected by the department, and three voting members from the North Dakota association of community facilities who are selected by the association is created. All meetings of the workgroup are open to the public. Subject to legislative appropriations, the workgroup shall hire a facilitator to lead the discussions relative to a new fee-for-service payment system for treatment or care centers and a consultant to perform the financial modeling and evaluation of the current and future payment system. If the workgroup does not receive funding from the legislative assembly for a facilitator, the workgroup shall select one member from

the department and one member from the association to serve as cochairmen of the workgroup.

Purchase of services. The department may purchase, from funds appropriated to it for that purpose, residential care, custody, treatment, training, and education for individuals with developmental disabilities from any treatment or care center licensed in this state.

Fee-for-service system - Fee determination. By July 1, 2005, the department shall implement a fee-for-service system of payment for services provided to individuals with developmental disabilities by treatment or care centers. The workgroup shall establish procedures for determining interim fees for new providers or new services. In order to receive payment from the department, a treatment or care center shall file with the department a claim for service rendered to an individual with a developmental disability. The fee-for-service system implemented by the department must require that a treatment or care center be responsible for its own operating costs and that the fee paid for service represents payment in full to the treatment or care center for services rendered.

Limitation on owner compensation for services provided. In establishing the fee to be paid for a service, the amount of total annual compensation allowed for an owner acting in an executive or administrative capacity must be limited as follows:

Number of clients served:	Compensation limit:
1 - 15	\$25,000
16 - 30	\$35,000
31 - 45	\$45,000
46+	\$50,000

The limits in this section are intended to be the total compensation allowed by this state in any one year regardless of the number of owners performing work for the treatment or care center. A proration of the total compensation for owners who perform services in this state and who perform services in other states must be made on the basis of individual time distribution records. For family members working in direct care, housekeeping, maintenance, dietary, or clerical positions, wages are limited to the wage paid to any nonrelated employee, with the same qualifications and experience, working in a similar job function for that organization. The allowable compensation limit is inclusive of all salaries and related fringe benefits and may not be construed to be an addition or enhancement to the fee payable to a treatment or care center.

Extraordinary client needs - Effect on fee. The workgroup shall develop criteria identifying extraordinary needs of individuals with developmental disabilities so severe as to make it difficult for the affected individuals to secure necessary services from a treatment or care center at the ordinary fee. Notwithstanding any other provision of this chapter, the department may determine specific fees for services provided by a treatment or care center to an individual with extraordinary needs.

Trust fund. Effective July 1, 2005, there is in the state treasury a special fund known as the developmental disabilities fee enhancement fund. The fund shall be established with not more than two-tenths of one percent of the total general fund moneys appropriated to the department for the biennium beginning July 1, 2005, for payment of the fees established under this chapter. Trust funds may be expended for reasonably unforeseeable costs experienced by treatment or care centers, one-time improvements made by a treatment or care center in order to comply with

life safety code requirements, or the additional costs associated with providing services to individuals with extraordinary needs.

Transition to establishment of fees. For payment of services furnished by treatment or care centers prior to July 1, 2005, the department shall operate the ratesetting process as it presently exists. The workgroup shall establish new protocols and methodologies for transitioning to a new payment system to permit an orderly transition to the establishment of fees under this chapter.

Federal requirements - Supremacy. If any provision of this chapter is determined by the United States government to be in conflict with existing or future requirements of the United States government so as to limit or preclude federal financial participation in medical assistance, the department shall comply with the federal requirements to the extent necessary to obtain federal financial participation and shall not comply with the provisions of this chapter if necessary to avoid a loss of federal financial participation.

Exclusion of state-owned or state-operated treatment or care centers. This chapter does not apply to state-owned or state-operated treatment or care centers.

Rulemaking authority of the department. The department shall establish, by rule, the procedures, as determined by the workgroup, for determining the fees to be paid for services provided by a treatment or care center and for implementing the other provisions of this chapter. Rules adopted under this chapter may be adopted through the emergency rulemaking process, if necessary.

Reporting to legislative council. During the 2003-04 interim, the department shall report to the legislative council regarding its progress in developing a fee-for-service payment system for treatment or care centers.

SECTION 2. REPEAL. Sections 25-16-10 and 25-16-15 of the North Dakota Century Code are repealed.

SECTION 3. REPEAL. Sections 25-16-10.1, 25-16-16, and 50-06-18 of the North Dakota Century Code are repealed.

SECTION 4. EFFECTIVE DATE. Section 3 of this Act becomes effective on July 1, 2005.

SECTION 5. EFFECTIVE DATE. By October 1, 2004, the department shall certify to the legislative council whether the department and the service providers reached an agreement on a new fee-for-service system.

Approved April 18, 2003

Filed April 18, 2003

INSURANCE

CHAPTER 232

HOUSE BILL NO. 1399

(Representatives Devlin, Delzer, Nelson, Price)
(Senators Fischer, J. Lee)

PRESCRIPTION DRUG ASSISTANCE

AN ACT to create a pharmaceutical manufacturers drug access program within the office of insurance commissioner for low-income individuals; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Prescription drug assistance. The insurance commissioner shall create and implement a program to assist individuals of low income to gain access to prescription medications through prescription drug assistance programs offered by pharmaceutical manufacturers, including free discount and coverage programs. The commissioner shall use available computer software programs that link an eligible individual with the appropriate pharmaceutical company patient assistance program relating to the individual's medically necessary drugs. The commissioner shall provide education to individuals and providers to promote the program and to expand enrollment and access to necessary medications for low-income individuals qualifying for the programs.

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 insurance commissioner for the purpose of implementing the pharmaceutical manufacturers drug access program, for the biennium beginning July 1, 2003, and ending June 30, 2005.

Approved April 7, 2003
Filed April 7, 2003

CHAPTER 233**HOUSE BILL NO. 1137**

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

INSURANCE COMPANY REPORTS

AN ACT to amend and reenact section 26.1-02-03 of the North Dakota Century Code, relating to requirements for an insurance company to do business in this state; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-02-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02-03. Inquiry into condition of company - Information supplied to commissioner - Penalty. The commissioner may address to any insurance company doing or applying for permission to do business in this state any inquiries in relation to ~~its~~ the company's activities, condition, or any other matter connected with ~~its~~ the company's transactions. The company shall reply ~~to the inquiries promptly~~ and in writing to such an inquiry within twenty days of receipt of the inquiry unless within that twenty days the company requests and the commissioner grants an extension of time. It is a violation of this title for a person to knowingly supply the commissioner with false, misleading, or incomplete information.

Approved March 13, 2003
Filed March 13, 2003

CHAPTER 234

HOUSE BILL NO. 1179

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

DISCLOSURE OF NONPUBLIC PERSONAL INFORMATION

AN ACT to amend and reenact section 26.1-02-27 of the North Dakota Century Code, relating to disclosing nonpublic personal information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-02-27 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02-27. Disclosing nonpublic personal information.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not disclose to a nonaffiliated third party a customer's nonpublic personal information contrary to the provisions of title V of the Gramm-Leach-Bliley Act [Pub. L. 106-102; 113 Stat. 1436] or contrary to the rules adopted by the commissioner under this section.
2.
 - a. The commissioner ~~may~~ shall adopt rules ~~as may be~~ necessary to carry out this section.
 - b. The rules must be consistent with and not more restrictive than the model regulation adopted by the national association of insurance commissioners entitled "Privacy of Consumer Financial and Health Information Regulation".
 - c. Notwithstanding subdivision b and subject to the exceptions, including the affiliate sharing exception provided for in the national association of insurance commissioner's model regulation, the rules may prohibit the disclosure of nonpublic personal health and financial information concerning an individual unless an authorization is obtained from the individual whose nonpublic personal health and financial information is sought to be disclosed.
3. This section does not create a private right of action.

Approved April 23, 2003
Filed April 23, 2003

CHAPTER 235

HOUSE BILL NO. 1231

(Representatives Keiser, Carlson, Dosch)
(Senators Espgaard, Grindberg, Klein)

INSURANCE FRAUD PREVENTION

AN ACT to create and enact sections 26.1-02.1-02.1, 26.1-02.1-06, 26.1-02.1-07, 26.1-02.1-08, 26.1-02.1-09, 26.1-02.1-10, and 26.1-02.1-11 of the North Dakota Century Code, relating to insurance fraud; to amend and reenact sections 26.1-02.1-01, 26.1-02.1-04, and 26.1-02.1-05 of the North Dakota Century Code, relating to insurance fraud; to repeal sections 26.1-02.1-02 and 26.1-02.1-03 of the North Dakota Century Code, relating to insurance fraud; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02.1-01. Definitions. As used in this chapter:

1. "Authorized agency" means any duly constituted criminal investigative department or agency of the United States or this state; the prosecuting attorney of any city, county, state, or of the United States or any subdivision thereof; or the insurance commissioner. "Business of insurance" means the writing of insurance or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or who are officers, directors, agents, or employees of insurers, or who are other persons authorized to act on their behalf. The term does not include the activities of the North Dakota life and health insurance guaranty association or the North Dakota insurance guaranty association.
2. "Financial loss" includes loss of earnings, out-of-pocket and other expenses, repair and replacement costs, and claims payments.
3. "Fraudulent insurance act" includes the following acts or omissions committed by a person knowingly and with intent to defraud:
 - a. Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by an insurer, reinsurer, insurance producer, or any agent thereof, false or misleading information as part of, in support of, or concerning a fact material to one or more of the following:
 - (1) An application for the issuance or renewal of an insurance policy or reinsurance contract;
 - (2) The rating of an insurance policy or reinsurance contract;
 - (3) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;

- (4) Premiums paid on an insurance policy or reinsurance contract;
 - (5) Payments made in accordance with the terms of an insurance policy or reinsurance contract;
 - (6) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction;
 - (7) The financial condition of an insurer or reinsurer;
 - (8) The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;
 - (9) The issuance of written evidence of insurance;
 - (10) The reinstatement of an insurance policy; or
 - (11) The formation of an agency, brokerage, or insurance producer contract.
- b. Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer, reinsurer, or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction.
 - c. Removal, concealment, alteration, or destruction of the assets or records of an insurer, reinsurer, or other person engaged in the business of insurance.
 - d. Theft by deception or otherwise, or embezzlement, abstracting, purloining, or conversion of moneys, funds, premiums, credits, or other property of an insurer, reinsurer, or person engaged in the business of insurance.
 - e. Attempting to commit, aiding or abetting in the commission of, or conspiring to commit the acts or omissions specified in this section.
4. "Insurance" means a contract or arrangement in which one undertakes to pay or indemnify another as to loss from certain contingencies called "risks", including through reinsurance; pay or grant a specified amount or determinable benefit to another in connection with ascertainable risk contingencies; pay an annuity to another; or act as surety. The term does not include a debt cancellation contract between a bank and debtor, between a credit union and debtor, or between a savings association and debtor and does not include a debt suspension contract between a bank and debtor, between a credit union and debtor, or between a savings association and debtor.
- 3- 5. "Insurer" includes an authorized insurer, self-insurer, reinsurer, broker, insurance producer, or any agent thereof means a person entering into arrangements or contracts of insurance or reinsurance and who agrees to perform any of the acts set forth in subsection 4, whether the person

has or is required to have a certificate of authority or denies being an insurer. The term does not include the North Dakota life and health insurance guaranty association, the risk management fund, a bank, credit union, or savings association as a party to a debt cancellation contract or debt suspension contract, or the North Dakota insurance guaranty association.

4. 6. "Person" means a ~~natural person, company,~~ an individual, corporation, ~~unincorporated association,~~ partnership, ~~professional corporation,~~ and ~~any other legal~~ association, joint stock company, trust, unincorporated organization, or any similar entity or any combination of the foregoing.
7. "Policy" means an individual or group policy, group certificate, contract, or arrangement of insurance or reinsurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.
5. 8. "Practitioner" means a licensee of this state authorized to practice medicine and surgery, psychology, chiropractic, or law or any other licensee of the state whose services are compensated, directly or indirectly, by insurance proceeds, or a licensee similarly licensed in other states and nations or the practitioner of any nonmedical treatment rendered in accordance with a recognized religious method of healing.
6. "Statement" includes any notice statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bills for services, diagnosis, prescription, hospital or doctor records, x-rays, test result, or other evidence of loss, injury, or expense.
9. "Reinsurance" means a contract, binder of coverage including placement slip, or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer.

SECTION 2. Section 26.1-02.1-02.1 of the North Dakota Century Code is created and enacted as follows:

26.1-02.1-02.1. Fraudulent insurance acts, interference, and participation of convicted felons prohibited.

1. A person may not commit a fraudulent insurance act.
2. A person may not knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter.
3. a. A person convicted of a felony involving dishonesty or breach of trust may not participate in the business of insurance.
- b. A person in the business of insurance may not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of insurance.

SECTION 3. AMENDMENT. Section 26.1-02.1-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02.1-04. Immunity.

1. A person when acting without malice is not subject to liability by virtue of filing reports, or furnishing orally or in writing other information concerning any suspected, anticipated, or completed fraudulent insurance act, when the reports or information are provided to or received from ~~any authorized agency;~~ the commissioner; federal, state, or local law enforcement or regulatory officials; ~~the national association of insurance commissioners;~~₁ or any other not-for-profit organization established to detect and prevent insurance fraud; ~~and their agents, employees, any employee or designees agent of any of these entities.~~
2. Except in prosecution for perjury or insurance fraud, and in the absence of malice, an insurer, or any officer, employee, or agent thereof, or any licensed insurance producer or private person who cooperates with, furnishes evidence, or provides or receives information regarding any suspected fraudulent insurance act to or from ~~an authorized agency;~~ the commissioner; federal, state, or local law enforcement or regulatory officials; ~~the national association of insurance commissioners;~~₁ or any not-for-profit organization established to detect and prevent fraudulent insurance acts ~~or~~ and any employee or agent of any these entities who complies with an order issued by a court of competent jurisdiction acting in response to a request by any of these entities to provide evidence or testimony is not subject to a criminal proceeding or to a civil penalty with respect to any act concerning which the person testifies to or produces relevant matter.
3. In the absence of malice, an insurer, or any officer, employee, or agent thereof, or any licensed insurance producer or private person who cooperates with, furnishes evidence, or provides information regarding any suspected fraudulent insurance act to ~~an authorized agency;~~ the commissioner; federal, state, or local law enforcement or regulatory officials; ~~the national association of insurance commissioners;~~₁ or any not-for-profit organization established to detect and prevent fraudulent insurance acts ~~or~~ and any employee or agent of any of these entities who complies with an order issued by a court of competent jurisdiction acting in response to a request by any of these entities to furnish evidence or provide testimony, is not subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature exists against the person, for filing reports, providing information, or otherwise cooperating with an investigation or examination of any of these entities.
4. The ~~authorized agency;~~ commissioner; federal, state, or local law enforcement or regulatory officials; ~~the national association of insurance commissioners;~~₁ or any not-for-profit organization established to detect and prevent fraudulent insurance acts and any employee or agent of any of these entities, when acting without malice is not subject to civil liability for libel, slander, or any other relevant tort, and no civil cause of action of any nature will lie against the person by virtue of the execution of official activities or duties of the entity by virtue of the publication of any report or bulletin related to the official activities or duties of the entity.

5. This section does not abrogate or modify in any way common law or statutory privilege or immunity heretofore enjoyed by any person or entity.

SECTION 4. AMENDMENT. Section 26.1-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-02.1-05. Penalties - ~~Probation~~ - Restitution.

1. A violation of section ~~26.1-02.1-02~~ 26.1-02.1-02.1 is a class C felony if the value of any property or services retained exceeds five thousand dollars and a class A misdemeanor in all other cases. For purposes of this section, the value of any property and services must be determined in accordance with subsection 6 of section 12.1-23-05.
2. In the event that a practitioner is adjudicated guilty of a violation of section ~~26.1-02.1-02~~ 26.1-02.1-02.1, the court shall notify the appropriate licensing authority of this state of the adjudication. The appropriate licensing authority shall hold an administrative hearing to consider the imposition of administrative sanctions as provided by law against the practitioner.
3. ~~Probation may not be granted to, nor may the imposition of a sentence be suspended, after the first adult conviction for a violation under section 26.1-02.1-02 and any subsequent conviction of the same.~~
4. ~~The existence of any fact that would make a person ineligible for probation under this section must be alleged in the information or indictment, and:~~
 - a. ~~Admitted by the defendant in open court;~~
 - b. ~~Determined to be true at trial by a jury of the court; or~~
 - c. ~~By plea of guilty or nolo contendere.~~
5. In addition to any other punishment, a person who violates section ~~26.1-02.1-02~~ 26.1-02.1-02.1 must be ordered to make restitution to the insurer or to any other person for any financial loss sustained as a result of the violation of section ~~26.1-02.1-02~~ 26.1-02.1-02.1. The court shall determine the extent and method of restitution.

SECTION 5. Section 26.1-02.1-06 of the North Dakota Century Code is created and enacted as follows:

26.1-02.1-06. Mandatory reporting of fraudulent insurance acts.

1. A person engaged in the business of insurance having knowledge or a reasonable belief that a fraudulent insurance act is being, will be, or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.
2. Any other person having knowledge or a reasonable belief that a fraudulent insurance 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.

3. A person who provides nonpublic personal information to the commissioner pursuant to this section does not violate the insurance privacy law under section 26.1-02-27.

SECTION 6. Section 26.1-02.1-07 of the North Dakota Century Code is created and enacted as follows:

26.1-02.1-07. Confidentiality.

1. Any documents, materials, or other information in the possession or control of the commissioner which are provided pursuant to section 26.1-02.1-06 or obtained by the commissioner in an investigation of suspected or actual fraudulent insurance acts are confidential by law and privileged, not subject to subpoena, and not subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.
2. Neither the commissioner nor any person who received documents, materials, or other information while acting under the authority of the commissioner may be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection 1.
3. In order to assist in the performance of the commissioner's duties, the commissioner may:
 - a. Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection 1 with other state, federal, and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with local, state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;
 - b. Receive documents, materials, 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 officials of other foreign or domestic jurisdictions, 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
 - c. Enter into agreements governing sharing and use of information consistent with this subsection.
4. A privilege or claim of confidentiality in the documents, materials, or information is not waived as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection 3.

5. Any investigative information gathered under section 26.1-02.1-06 or 26.1-02.1-08 is criminal investigative information and may not be disclosed except as provided under section 44-04-18.7.

SECTION 7. Section 26.1-02.1-08 of the North Dakota Century Code is created and enacted as follows:

26.1-02.1-08. Creation and purpose of the insurance fraud unit.

1. The North Dakota insurance fraud unit is established within the insurance department. The commissioner may appoint the full-time supervisory and investigative personnel of the insurance fraud unit, who must be qualified by training and experience to perform the duties of their positions. The commissioner may also appoint clerical and other staff necessary for the insurance fraud unit to carry out its duties and responsibilities under this chapter.
2. The insurance fraud unit shall:
 - a. Initiate independent inquiries and conduct independent investigations when the insurance fraud unit has cause to believe that a fraudulent insurance act may be, is being, or has been committed;
 - b. Review reports or complaints of alleged fraudulent insurance activities from federal, state, and local law enforcement and regulatory agencies, persons engaged in the business of insurance, and the public to determine whether the reports require further investigation and to conduct these investigations; and
 - c. Conduct independent examinations of alleged fraudulent insurance acts and undertake independent studies to determine the extent of fraudulent insurance acts.
3. The insurance fraud unit may:
 - a. Inspect, copy, or collect records and evidence;
 - b. Serve subpoenas;
 - c. Administer oaths and affirmations;
 - d. Share records and evidence with federal, state, or local law enforcement or regulatory agencies;
 - e. Execute search warrants and arrest warrants for criminal violations of this chapter;
 - f. Arrest upon probable cause without warrant a person found in the act of violating or attempting to violate a provision of this chapter;
 - g. Make criminal referrals to prosecuting authorities; and
 - h. Conduct investigations outside of this state. If the information the insurance fraud unit seeks to obtain is located outside this state, the person from whom the information is sought may make the

information available to the insurance fraud unit to examine at the place where the information is located. The insurance fraud unit may designate a representative, including an official of the state in which the matter is located, to inspect the information on behalf of the insurance fraud unit, and the insurance fraud unit may respond to a similar request from an official of another state.

SECTION 8. Section 26.1-02.1-09 of the North Dakota Century Code is created and enacted as follows:

26.1-02.1-09. Peace officer status. A fraud unit investigator has all the powers conferred by law upon any peace officer of this state when making arrests for criminal violations established as a result of an investigation pursuant to this chapter. The general laws applicable to arrests by a peace officer of the state also apply to a fraud unit investigator. A fraud unit investigator may execute an arrest warrant and search warrant for the same criminal violation; serve subpoenas issued for the examination, investigation, and trial of all offenses identified through an investigation; and arrest upon probable cause without warrant a person found in the act of committing a violation of the provisions of this chapter.

SECTION 9. Section 26.1-02.1-10 of the North Dakota Century Code is created and enacted as follows:

26.1-02.1-10. Other law enforcement or regulatory authority. This chapter does not:

1. Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;
2. Prevent or prohibit a person from disclosing voluntarily information concerning insurance fraud to a law enforcement or regulatory agency other than the insurance fraud unit; or
3. Limit the powers granted elsewhere by the laws of this state to the commissioner or the insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

SECTION 10. Section 26.1-02.1-11 of the North Dakota Century Code is created and enacted as follows:

26.1-02.1-11. Rules. The commissioner may adopt rules determined necessary by the commissioner for the administration of this chapter.

SECTION 11. REPEAL. Sections 26.1-02.1-02 and 26.1-02.1-03 of the North Dakota Century Code are repealed.

Approved April 11, 2003
Filed April 11, 2003

CHAPTER 236**SENATE BILL NO. 2121**

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

**INSURANCE COMPANY ANNUAL STATEMENT
FILINGS**

AN ACT to amend and reenact section 26.1-03-07 of the North Dakota Century Code, relating to annual statement filings by insurance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-03-07 of the North Dakota Century Code is amended and reenacted as follows:

26.1-03-07. Annual statement to be filed. Every insurance company doing business in this state shall transmit to the commissioner, not later than March first of each year, a statement of its condition and business for the year ending on the preceding December thirty-first. If March first falls on a Saturday or legal holiday, the statement is due on the next succeeding business day. A company organized under the law of any foreign country or province shall include in the statement only business transacted within the United States, and shall file a supplemental statement of business transacted without the United States not later than December first. The commissioner shall stamp the date of receipt on every statement. The commissioner may not accept the annual statement from any company if the statement was transmitted after the date designated in this section unless the statement is accompanied by the penalty prescribed by section 26.1-03-16. The commissioner may designate the national association of insurance commissioners as the repository for the filing.

Approved March 14, 2003
Filed March 17, 2003

CHAPTER 237**SENATE BILL NO. 2205**

(Senators Klein, Espegard)
(Representatives Dosch, Wald)

INSURANCE COMPANY FILING EXTENSIONS

AN ACT to amend and reenact section 26.1-03-16 of the North Dakota Century Code, relating to extension of the time for an insurance company to file a statement with the insurance commissioner.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-03-16 of the North Dakota Century Code is amended and reenacted as follows:

26.1-03-16. Penalty for not making statement. Any insurance company doing business in this state which neglects to make and file any statement in the manner and within the time prescribed in this chapter forfeits one hundred dollars for each day's neglect, and upon notice by the commissioner to that effect, its authority to do new business ceases during the default. Any new business done by an insurance company after it has neglected to make a required statement is in violation of law. The commissioner may grant an insurance company an extension beyond the date designated in this section and may waive or reduce any penalty during the extension, upon a showing of good cause by the insurance company.

Approved March 14, 2003
Filed March 17, 2003

CHAPTER 238**HOUSE BILL NO. 1140**

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

**INSURANCE COMPANY REPORTS, EXISTENCE, AND
INCORPORATION**

AN ACT to amend and reenact subsection 3 of section 26.1-03-19.2, subsection 5 of section 26.1-12-03, and sections 26.1-12-04 and 26.1-18.1-08 of the North Dakota Century Code, relating to examination reports of foreign companies, term of existence of a mutual insurance company, articles of incorporation of a mutual insurance company, and annual reports of health maintenance organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 26.1-03-19.2 of the North Dakota Century Code is amended and reenacted as follows:

3. In lieu of an examination under this chapter of any foreign insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until January 1, 1994. Thereafter, the reports may only be accepted if the insurance department was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program, or the examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department, or the commissioner finds that the examination was performed by the insurance department of a state that was previously accredited under the national association of insurance commissioners but has lost its accreditation, provided that state's consumer protection laws are no less protective than those present under North Dakota law.

SECTION 2. AMENDMENT. Subsection 5 of section 26.1-12-03 of the North Dakota Century Code is amended and reenacted as follows:

5. The term of existence of the company, which may ~~not exceed thirty~~ years be perpetual.

SECTION 3. AMENDMENT. Section 26.1-12-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-12-04. Articles of incorporation - Filing - Issuance of certificate.

The articles of incorporation or amendments thereto of a mutual insurance company organized under this chapter must be submitted to the commissioner ~~and to the~~

~~attorney general.~~ If the commissioner ~~and the attorney general determine~~ determines the articles or amendments comply with this chapter, the commissioner shall approve the same. The articles or amendments must be filed in the office of the secretary of state and a certified copy must be filed with the commissioner. The commissioner shall deliver a certificate to the company indicating that it has complied with this chapter.

SECTION 4. AMENDMENT. Section 26.1-18.1-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-18.1-08. Annual report.

1. Every domestic health maintenance organization shall annually, on or before March first, and every foreign health maintenance organization shall annually, on or before the date that its annual report is due in its domestic state, file a report verified by at least two principal officers with the commissioner, covering the preceding calendar year. The report must be on forms prescribed by the commissioner. In addition, the domestic health maintenance organization shall file by March first, and every foreign health maintenance organization shall file annually, on or before the date that its annual report is due in its domestic state, unless otherwise stated:
 - a. Audited financial statements on or before June first.
 - b. A list of the providers who have executed a contract that complies with subdivision a of subsection 4 of section 26.1-18.1-12.
 - c. (1) A description of the grievance procedures.
(2) The total number of grievances handled through the procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances.
2. The commissioner may require additional reports as are deemed necessary and appropriate to enable the commissioner to carry out the commissioner's duties under this chapter. The commissioner may waive the filing of the annual report and other information for a health maintenance organization that has discontinued its operation in this state.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 239**SENATE BILL NO. 2195**

(Senator J. Lee)
(Representative Price)

**COMPREHENSIVE HEALTH ASSOCIATION
REVISIONS**

AN ACT to create and enact a new subsection to section 26.1-04-03 and four new sections to chapter 26.1-08 of the North Dakota Century Code, relating to the comprehensive health association of North Dakota; to amend and reenact subsection 2 of section 26.1-03-17 and sections 26.1-08-01, 26.1-08-06, 26.1-08-06.1, 26.1-08-07, 26.1-08-08, 26.1-08-09, 26.1-08-10, 26.1-08-11, 26.1-08-12, 26.1-08-13, and 57-38-30.4 of the North Dakota Century Code, relating to the comprehensive health association of North Dakota; and to repeal sections 26.1-08-02, 26.1-08-03, and 26.1-08-04 of the North Dakota Century Code, relating to the comprehensive health association of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 26.1-03-17 of the North Dakota Century Code is amended and reenacted as follows:

2. An insurance company, nonprofit health service corporation, health maintenance organization, or prepaid legal service organization subject to the tax imposed by subsection 1 is entitled to a credit against the tax due for the amount of any assessment paid as a member of a comprehensive health association under subsection ~~4~~ 3 of section 26.1-08-09 for which the member may be liable for the year in which the assessment was paid, a credit as provided under section 26.1-38.1-10, a credit against the tax due for an amount equal to the examination fees paid to the commissioner under sections 26.1-01-07, 26.1-02-02, 26.1-03-19.6, 26.1-03-22, 26.1-17-32, and 26.1-18.1-18, and a credit against the tax due for an amount equal to the ad valorem taxes, whether direct or in the form of rent, on that proportion of premises occupied as the principal office in this state for over one-half of the year for which the tax is paid. The credits under this subsection must be prorated on a quarterly basis and may not exceed the total tax liability under subsection 1.

¹¹⁷ **SECTION 2.** A new subsection to section 26.1-04-03 of the North Dakota Century Code is created and enacted as follows:

Unfair referral. An insurer, insurance producer, or third-party administrator referring an individual employee to the association, or arranging for an individual employee to apply to the association for the

¹¹⁷ Section 26.1-04-03 was also amended by section 17 of House Bill No. 1438, chapter 211.

purpose of separating that employee from group health insurance coverage provided in connection with the employee's employment.

¹¹⁸ **SECTION 3. 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 created by section 26.1-08-03 of North Dakota.
2. "~~Association~~ Benefit plan" means insurance policy coverage offered by the association through the lead carrier.
3. "~~Association~~ Benefit plan premium" means the charge for ~~membership~~ in the association 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 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. 103-66; 107-637; 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;

¹¹⁸ Section 26.1-08-01 was also amended by section 1 of Senate Bill No. 2029, chapter 240.

- i. A health plan offered under chapter 89 of United States Code title 5 [5 U.S.C. 8901 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; 75 Stat. 613; 22 U.S.C. 2504(e)].
6. "Eligible ~~person~~ individual" means ~~either~~:
- a. ~~An an individual who has been a resident of this state for a period of six months and meets the enrollment requirements of eligible for association benefit plan coverage as specified under section 26.1-08-12; or~~
 - b. ~~An individual who:~~
 - (1) ~~Is currently a resident of this state;~~
 - (2) ~~Has had eighteen months of qualifying previous coverage as defined in section 26.1-36.3-01, the most recent of which is coverage under a group health benefit plan, governmental plan, or church plan, as those terms are defined in section 26.1-36.3-01;~~
 - (3) ~~Has applied for coverage under this chapter within sixty-three days of the termination of the qualifying previous coverage;~~
 - (4) ~~Is not eligible for coverage under a group health benefit plan as that term is defined in section 26.1-36.3-01, medicare, or medicaid;~~
 - (5) ~~Does not have any other health insurance coverage;~~
 - (6) ~~Has not had the most recent qualifying previous coverage described in paragraph 2 terminated for nonpayment of premiums or fraud; and~~
 - (7) ~~If offered the option, has elected continuation coverage under the Consolidated Omnibus Budget Reconciliation Act [Pub. L. 99-272; 100 Stat. 82], or under a similar state program, and that coverage was exhausted.~~
7. "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. "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.

5. 9. "Health ~~benefits~~ 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 offered on an indemnity or prepaid basis which that pay the costs of or provide medical, surgical, or hospital care or, if selected by the eligible person individual, chiropractic care. The term does not include:
- a. Coverage only for accident, disability income insurance, or any combination of the two;
 - b. Coverage issued as a supplement to liability insurance;
 - c. Liability insurance, including general liability insurance and automobile liability insurance;
 - d. Workers' compensation or similar insurance;
 - e. Automobile medical payment insurance;
 - f. Credit-only insurance;
 - g. Coverage for onsite medical clinics; or
 - h. Other similar insurance coverage under which benefits for medical care are secondary or incidental to other insurance benefits.
6. 10. "Insurer" means any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization selling group or individual hospital, medical, surgical, or major medical coverage, and any other entity providing or selling health insurance coverage or health benefits that are subject to state insurance regulation.
7. 11. "Lead carrier" means the insurance company selected by the ~~association~~ board to administer the association ~~plan~~ benefit plans.
12. "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.].
13. "Participating member" means any insurance company that is licensed or authorized to do business in this state which has 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.
8. 14. "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.
9. 15. "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 ~~which~~ 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.
- 40- 16. "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 a ~~qualified medicare supplement plan~~ 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. 1181 et seq.].
17. "Resident" means an individual who has been a legal resident of this state for a minimum of one hundred eighty-three days. However, for a federally defined eligible individual, there is no minimum length of residency requirement.
18. "Significant break in coverage" means a period of sixty-three or more consecutive days during all of which the individual does not have any credible coverage. Neither a waiting period nor an affiliation period is taken into account in determining a significant break in coverage.

SECTION 4. A new section to chapter 26.1-08 of the North Dakota Century Code is created and enacted as follows:

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 health insurance contracts 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 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 5. A new section to chapter 26.1-08 of the North Dakota Century Code is created and enacted as follows:

Powers and duties of commissioner and board - Fees.

1. The lead carrier shall operate the association subject to the supervision and control of the board.
2. The board shall:
 - a. Formulate general policies to advance the purposes of this chapter;
 - b. Approve the association's contract with the lead carrier;
 - c. Approve the benefit plans;
 - d. Approve the benefit plan premiums;
 - e. Establish and modify from time to time, as appropriate, agents' referral fees;
 - f. Approve the annual operating budget and any assessments to the participating members;
 - g. Approve independent annual audits to assure the general accuracy of the financial data submitted by the lead carrier for the association;
 - h. Develop and implement a program to publicize the existence of the association, the eligibility requirement, and procedures for enrollment and to maintain public awareness of the association;
 - i. Approve bylaws and operating rules;
 - j. Exempt, by a two-thirds majority vote, an applicant from the preexisting condition provisions of subsection 10 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
 - k. Provide for other matters as may be necessary and proper for the execution of the commissioner's and board's powers, duties, and obligations.
3. The commissioner, board, and lead carrier employees are not liable for any obligations of the association.
4. The commissioner may establish additional powers and duties of the board and may adopt rules necessary and proper for the association and to implement this chapter.

SECTION 6. A new section to chapter 26.1-08 of the North Dakota Century Code is created and enacted as follows:

Operation of the association. The association may:

1. Exercise the powers granted to insurance companies under the laws of this state.
2. Sue or be sued, including taking any legal actions necessary or proper to recover or collect assessment due the association.
3. Take such legal action as necessary:
 - a. To avoid the payment of improper claims against the association or the coverage provided by or through the association;
 - b. To recover any amounts erroneously or improperly paid by the association;
 - c. To recover any amounts paid by the association as a result of mistake of fact or law; or
 - d. To recover other amounts due the association.
4. Enter contracts with the insurance companies, similar associations in other states, or other persons for the performance of administrative functions.
5. Establish administrative and accounting procedures for the operation of the association.
6. Provide for the reinsuring of risks incurred as a result of issuing the coverages required by individuals covered by the association benefit plans.
7. Provide for the administration by the association of policies, which are reinsured pursuant to subsection 6.
8. Issue benefit plans for coverage in accordance with the requirements of sections 26.1-08-06 and 26.1-08-06.1.
9. Design, utilize, contract, or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations, and other limited network provider arrangements.

SECTION 7. AMENDMENT. Section 26.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-06. Minimum benefits of a qualified comprehensive Comprehensive benefit plan.

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, ~~whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:~~

- a. The minimum benefits for covered individuals must, subject to subsection 2, be equal to at least eighty percent of the cost of covered services in excess of an annual deductible which must not be less than five hundred dollars per person. The coverage must include a limitation of three thousand dollars per person on the total annual out-of-pocket expenses for services covered under this subsection. The coverage may be subject to a maximum lifetime benefit of not less than one million dollars.
- b. Covered expenses must be the usual and customary charges for the following services and articles when prescribed by a physician:
- (1) Hospital services.
 - (2) Professional services for the diagnosis or treatment of injuries, illness, or conditions, other than outpatient mental or dental, which are rendered by a physician or at a physician's direction.
 - (3) Drugs requiring a physician's prescription.
 - (4) Services of a nursing home for not more than one hundred twenty days in a year if the services commence within fourteen days following confinement of at least three days in a hospital for the same condition.
 - (5) Service of a home health agency up to a maximum of two hundred seventy visits per year.
 - (6) Use of radium or other radioactive materials.
 - (7) Oxygen.
 - (8) Anesthetics.
 - (9) Prostheses.
 - (10) Rental or purchase, as appropriate, of durable medical equipment.
 - (11) Diagnostic x-rays and laboratory tests.
 - (12) Oral surgery for partially or completely unerupted impacted teeth, a tooth root without the extraction of the entire tooth, or the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth.
 - (13) Services of a physical therapist.
 - (14) Transportation provided by a licensed ambulance service to the nearest facility qualified to treat the condition.
 - (15) Substance abuse and mental disorders as outlined in sections 26.1-36-08 and 26.1-36-09.

- e. Covered expenses must include, at the option of the eligible person, the usual and customary charges for professional services rendered by a chiropractor and for services and articles prescribed by a chiropractor for which an additional premium may be charged.
- d. Covered expenses for the services or articles specified in this subsection do not include:
 - (1) Any charge for any care or for any injury or disease either arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable without regard to fault under coverage statutorily required to be contained in any motor vehicle or other liability insurance policy or equivalent self-insurance, or for which benefits are payable under another accident and health insurance policy or medicare.
 - (2) Any charge for treatment for cosmetic purposes other than surgery for the repair of an injury or birth defect.
 - (3) Any charge for travel other than transportation provided by a licensed ambulance service to the nearest facility qualified to treat the condition.
 - (4) Any charge for confinement in a private room to the extent it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician.
 - (5) That part of any charge for services or articles rendered or prescribed by a physician, dentist, chiropractor, or other health care personnel, which exceeds the prevailing charge in the locality where the service is provided.
 - (6) Any charge for services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles.
 - (7) Care which is primarily for custodial or domiciliary purposes which would not qualify as eligible services under medicare.
 - (8) Any charge for organ transplants unless prior approval is received from the board of directors of the comprehensive health association.
- 2. A qualified comprehensive plan also must offer the eligible person the choice of an annual deductible of not less than one thousand dollars per person instead of that provided in subdivision a of subsection 4. 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. 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. The coverage may include deductibles of not less than five hundred dollars per individual per benefit period.
5. 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. Any coverage or combination of coverages through the association may not exceed a lifetime maximum benefit of one million dollars for an individual.
7. 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. The coverage may include preferred provider organizations, health maintenance organizations, and other limited network provider arrangements.
9. 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.
10. Coverage must include substance abuse and mental disorders as outlined in sections 26.1-36-08 and 26.1-36-09.
11. 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.
12. The coverage must include organ transplants as approved by the board.
13. 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 workers' compensation 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 8. AMENDMENT. Section 26.1-08-06.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-06.1. Qualified medicare Age sixty-five and over and disabled supplement plan plans. A qualified medicare basic supplement plan includes medicare supplement plans A and F. These plans are available to and standard supplemental plan must be offered to individuals who are eligible for medicare by reason of age or disability. Supplemental plans issued by the association must be developed by the lead carrier and approved by the board. Any coverage or combination of coverages through the association may not exceed a maximum benefit of one million dollars for an individual.

SECTION 9. 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 ~~association or the~~ lead carrier shall file with the commissioner, following approval from the board, all benefit plans, brochures, and other materials required to be approved to be offered under this chapter. The commissioner shall approve or disapprove any form within sixty days of receipt.

SECTION 10. AMENDMENT. Section 26.1-08-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-08. Association Benefit plan premium. The schedule of premiums to be charged eligible ~~persons~~ individuals for ~~membership in the association~~ a benefit plan must be established by the ~~association~~ lead carrier and approved by the board, but may not exceed one hundred thirty-five percent of the average individual premium rates charged by the five largest insurers with the largest individual qualified plan of insurance in force in this state. The premium rates of the five insurers used to establish the premium rates for each type of coverage offered by the association must be determined by the commissioner from information provided by all insurers annually at the request of the commissioner. The information requested must include the number of qualified plans or actuarial equivalent plans offered by each insurer and the rates charged by the insurer for each type of plan offered by the insurer and any other information the commissioner considers as necessary. The commissioner shall utilize generally acceptable actuarial principles and structurally compatible rates for similar coverage throughout the state. If similar coverage is not offered by other insurance carriers, premium rates for actuarial equivalent benefit plans offered by other insurers in the state must be provided by the commissioner and utilized by the lead carrier to determine association rates for the benefit plans.

SECTION 11. AMENDMENT. Section 26.1-08-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-09. Operation of association plan Participating members.

1. Upon certification as an eligible person in the manner provided by section 26.1-08-12, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier. 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.

2. ~~Not less than eighty-seven and one-half percent of the association plan premium paid to the lead carrier may be used to pay claims and not more than twelve and one-half percent may be used for payment of the lead carrier's direct and indirect expenses as specified in section 26.1-08-10. All participating members shall maintain their membership in the association, as a condition for writing policies in this state.~~
3. ~~Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan or be allocated to reduce association plan premiums.~~
4. ~~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 and meeting expenses under subsection 2 of section 26.1-08-03 of the association plan. The difference between the total claims expense of the association plan and the premium payments allocated to the payment of benefits benefit plan premiums received is the liability of these association the participating members that are liable for state income tax or state premium tax. Such association participating members shall share in the excess costs of the association plan in an amount equal to the ratio of a participating member's total annual premium volume for accident and health insurance charges, received from or on behalf of state residents, to the total accident and health insurance premium contract charges volume received by association all of the participating members that are liable for state income taxes or state premium taxes from or on behalf of state residents, as determined by the commissioner lead carrier and approved by the board.~~
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 association lead carrier is grounds for termination of membership.

SECTION 12. AMENDMENT. Section 26.1-08-10 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-10. Administration of the association plan.

1. ~~Any participating member of the association shall submit to the commissioner the policies which are being proposed to serve as the association plan. The commissioner shall prescribe by rule the time and manner of the submission. Not less than eighty-seven and one-half percent of the association plan premium paid to the lead carrier may be used to pay claims.~~
2. ~~The association shall select policies and contracts by a member or members of the association to be the association plan. The association shall select one lead carrier to issue the qualified plans. The board of directors of the association shall prepare appropriate specifications and bid forms and may solicit bids from the members of the association for the purpose of selecting the lead carrier. The selection of the lead~~

carrier must be based upon criteria established by the board. Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses due to claims expenses of the association or be allocated to reduce benefit plan premiums.

3. ~~The lead carrier shall perform all administrative and claims payment functions required by this section. The lead carrier shall provide these services~~ agreement must continue for a period of at least three years, unless a request to terminate is approved by the ~~association and the commissioner~~ board. The ~~association and the commissioner~~ board shall approve or deny a request to terminate within ninety days of its receipt. A failure to make a final decision on a request to terminate within the specified period is deemed an approval. ~~The association shall invite submissions of policy forms from members of the association, including the lead carrier, six months prior to the expiration of each three-year period. The association shall follow subsection 2 in selecting a lead carrier for the subsequent three-year period, or if a request to terminate is approved on or before the end of the three-year period. The agreement will be automatically renewed until either party terminates the agreement.~~
4. ~~The lead carrier shall provide all eligible persons involved in the association plan an individual certificate setting forth a statement as to the insurance protection to which the person 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.~~
5. ~~The lead carrier shall submit to the association and the commissioner on a semiannual basis a report of the operation of the association plan. The association shall determine the specific information to be contained in the report prior to the effective date of the association plan.~~
6. ~~The lead carrier shall pay all claims pursuant to this chapter and shall indicate that the claim was paid by the association plan. Each claim payment must include information specifying the procedure involved in the event a dispute over the amount of payment arises.~~
7. ~~The lead carrier must be reimbursed from the association plan premiums received for its direct and indirect expenses. Direct and indirect expenses include a prorated reimbursement for the portion of the lead carrier's administrative, printing, claims administration, management, and building overhead expenses which are assignable to the maintenance and administration of the association plan. The association shall approve cost accounting methods to substantiate the lead carrier's cost reports consistent with generally accepted accounting principles. Direct and indirect expenses may not include costs directly related to the original submission of policy forms prior to selection as the lead carrier.~~
8. 5. ~~The lead carrier is, when carrying out its duties under this chapter, an agent of the association and the commissioner~~ board, and is civilly liable for its actions, subject to the laws of this state.
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 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 13. AMENDMENT. Section 26.1-08-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-11. Solicitation of eligible ~~persons~~ individuals.

1. The association, pursuant to a plan approved by the ~~commissioner~~ board, shall disseminate appropriate information to the residents of this state regarding the existence of the association ~~plan~~, the benefit plans, and the means of enrollment. Means of communication may include use of the press, radio, electronic mail, internet, and television, as well as publication in appropriate state offices and publications.
2. The association and board shall devise and implement means of maintaining public awareness of ~~this chapter~~ the association and shall administer this chapter in a manner ~~which~~ that facilitates public participation ~~in the association plan~~.
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 referral fee ~~of twenty-five~~

~~dollars~~ 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 ~~which~~ that rejects or applies underwriting restrictions to an applicant for accident and health insurance shall notify the applicant of the existence of the association ~~plan~~, requirements for being accepted in it, and the procedure for applying to it.

¹¹⁹ **SECTION 14. AMENDMENT.** Section 26.1-08-12 of the North Dakota Century Code is amended and reenacted as follows:

26.1-08-12. Enrollment by eligible person Eligibility.

1. The association ~~plan~~ must be open for enrollment by eligible ~~persons~~ individuals. A ~~person is eligible and may enroll in the plan by submission of an application to the lead carrier.~~ Eligible individuals shall apply for enrollment in the association by submitting an application to the lead carrier. The application must ~~provide~~:
 - a. ~~The~~ Provide the name, address, and age of the applicant; ~~and~~.
 - b. Provide the length of applicant's residence in this state.
 - ~~b.~~ c. ~~The~~ Provide the name, address, and age of spouse and children, if any; ~~if they are to be insured.~~
 - e. ~~For an "eligible person" under subdivision a of subsection 4 of section 26.1-08-01, written evidence that the applicant has been rejected for accident and health insurance, or that restrictive riders of a preexisting conditions limitation, the effect of which is to reduce substantially coverage from that received by a person considered a standard risk, was required, by at least one insurance company within six months of the date of the application.~~
 - d. A 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 ~~subsection 4~~ this section or forward the eligible ~~person~~ individual a notice of acceptance and billing information. Insurance is effective ~~immediately upon receipt of the first month's association plan premium, and is retroactive to the date of the application or the day following the date shown on the written rejection or refusal,~~ if the applicant otherwise complies with this chapter.

¹¹⁹ Section 26.1-08-12 was also amended by section 2 of Senate Bill No. 2029, chapter 240, section 3 of Senate Bill No. 2029, chapter 240, section 4 of Senate Bill No. 2029, chapter 240, and section 5 of Senate Bill No. 2029, chapter 240.

3. An eligible ~~person~~ individual may not purchase more than one policy from the association ~~plan~~.
4. A person who obtains coverage pursuant to this section may not be covered for maternity during the first two hundred seventy days or any other preexisting condition during the first one hundred eighty days of coverage under the association plan if the person was diagnosed or treated for that condition during the ninety days immediately preceding the date of the application. Any person with coverage through the association plan 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 eight days of coverage. This subsection does not apply to a person receiving nonelective procedures who 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 filing of an application or to a person who is treated by nonelective procedures for a congenital or genetic disease. No preexisting condition exclusion or waiting period may be imposed under this subsection, or in the terms of the coverage obtained under this chapter, on an "eligible person" under subdivision b of subsection 4 of section 26.1-08-04. For an "eligible person" under subdivision a of subsection 4 of section 26.1-08-04, any preexisting condition exclusion must be reduced by the aggregate period of qualifying previous coverage in the same manner as provided in subsection 3 of section 26.1-36.3-06. An individual may qualify to enroll in the association for benefit plan coverage as:

a. A standard applicant:

- (1) An individual who has been a resident of this state for one hundred eighty-three days and continues to be a resident of the state who has received from at least one insurance carrier within one hundred eighty-three 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 an insurer to issue insurance except at the rate exceeding the association benefit rate.
- (2) Is not eligible for 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, 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 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 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 for one hundred eighty-three days and continues to be a resident of this state who has received from at least one insurance carrier within one hundred eighty-three 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 an insurer to issue insurance except at the rate exceeding the association benefit rate.
 - (2) Is not eligible for the state's medical assistance program.
5. 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. 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, refusal, or substantially reduced coverage.

6. 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 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.
8. Each resident dependent of an individual who is eligible for association coverage is also eligible for association coverage.
9. Each spouse of an individual who is eligible for association coverage with a preexisting maternity condition is also eligible for association coverage.
10. 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 ninety days immediately preceding the 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.
11. 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.
 - c. Has obtained coverage as a federally eligible individual as defined in subdivision b of subsection 4.
 - d. Has obtained coverage as an eligible person under subdivision a of subsection 4, 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.

12. An individual is not eligible for coverage through the association if:
- a. The individual is determined to be eligible for health care benefits under 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.
 - 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. This limitation does not apply to an applicant who is a federally defined eligible individual.
 - 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.
13. A period of credible 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 15. 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. Coverage under this chapter terminates:

1. Upon request of the covered person.
2. For failure to pay the required premium subject to a thirty-one-day grace period.
3. When the one million dollar lifetime maximum benefit amount has been reached ~~under subdivision a of subsection 4 of section 26.1-08-06.~~
4. If the covered person qualifies for health benefits under ~~other plans or policies~~ 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 ~~plan~~ calendar year, except for an ~~association participant~~ individual who is absent from the state for a verifiable medical reason as determined by the ~~association~~ board.

SECTION 16. A new section to chapter 26.1-08 of the North Dakota Century Code is created and enacted as follows:

Exempt from premium tax. The association is exempt from the insurance premium tax imposed under section 26.1-03-17.

SECTION 17. AMENDMENT. Section 57-38-30.4 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30.4. Income tax credit for comprehensive health association assessments. The amount of any assessment paid by any member of the comprehensive health association under subsection 4 3 of section 26.1-08-09 is a credit against the state income tax for which a member may be liable for the year which the assessment was paid.

SECTION 18. REPEAL. Sections 26.1-08-02, 26.1-08-03, and 26.1-08-04 of the North Dakota Century Code are repealed.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 240

SENATE BILL NO. 2029 (Legislative Council) (Budget Committee on Health Care)

HEALTH INSURANCE MANDATE REVIEW

AN ACT to create and enact a new subsection to section 26.1-08-01, a new subdivision to subsection 4 of section 26.1-08-12, a new subdivision to subsection 10 of section 26.1-08-12, and a new subdivision to subsection 11 of section 26.1-08-12 of the North Dakota Century Code, relating to health insurance coverage through the comprehensive health association of North Dakota; and to amend and reenact subdivision e of subsection 12 of section 26.1-08-12 and section 54-03-28 of the North Dakota Century Code, relating to health insurance coverage through the comprehensive health association of North Dakota and legislative measures mandating health insurance coverage of services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁰ **SECTION 1.** A new subsection to section 26.1-08-01 of the North Dakota Century Code is created and enacted as follows:

"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.

¹²¹ **SECTION 2.** A new subdivision to subsection 4 of section 26.1-08-12 of the North Dakota Century Code as amended in section 14 of Senate Bill No. 2195, as approved by the fifty-eighth legislative assembly, is created and enacted as follows:

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;

¹²⁰ Section 26.1-08-01 was also amended by section 3 of Senate Bill No. 2195, chapter 239.

¹²¹ Section 26.1-08-12 was also amended by section 3 of Senate Bill No. 2029, chapter 240, section 4 of Senate Bill No. 2029, chapter 240, section 5 of Senate Bill No. 2029, chapter 240, and section 14 of Senate Bill No. 2195, chapter 239.

- (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; and
- (f) Does not have health insurance coverage through:
 - [1] The 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.

¹²² **SECTION 3.** A new subdivision to subsection 10 of section 26.1-08-12 of the North Dakota Century Code as amended in section 14 of Senate Bill No. 2195, as approved by the fifty-eighth legislative assembly, is created and enacted as follows:

A preexisting condition may not be imposed on an individual who is eligible under section 2 of this Act.

¹²² Section 26.1-08-12 was also amended by section 2 of Senate Bill No. 2029, chapter 240, section 4 of Senate Bill No. 2029, chapter 240, section 5 of Senate Bill No. 2029, chapter 240, and section 14 of Senate Bill No. 2195, chapter 239.

¹²³ **SECTION 4.** A new subdivision to subsection 11 of section 26.1-08-12 of the North Dakota Century Code as amended in section 14 of Senate Bill No. 2195, as approved by the fifty-eighth legislative assembly, is created and enacted as follows:

Has obtained coverage as an eligible individual under section 2 of this Act.

¹²⁴ **SECTION 5. AMENDMENT.** Subdivision e of subsection 12 of section 26.1-08-12 of the North Dakota Century Code as amended in section 14 of Senate Bill No. 2195, as approved by the fifty-eighth legislative assembly, is amended and reenacted as follows:

- 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].

SECTION 6. AMENDMENT. Section 54-03-28 of the North Dakota Century Code is amended and reenacted as follows:

54-03-28. Health insurance mandated coverage of services - Cost-benefit analysis requirement.

1. A legislative measure mandating health insurance coverage of services or payment for specified providers of services may not be acted on by any committee of the legislative assembly unless the measure is accompanied by a cost-benefit analysis provided by the legislative council. Factors to consider in this analysis include:
 - a. The extent to which the proposed mandate would increase or decrease the cost of the service.
 - b. The extent to which the proposed mandate would increase the appropriate use of the service.
 - c. The extent to which the proposed mandate would increase or decrease the administrative expenses of insurers and the premium and administrative expenses of insureds.
 - d. The impact of the proposed mandate on the total cost of health care.

¹²³ Section 26.1-08-12 was also amended by section 2 of Senate Bill No. 2029, chapter 240, section 3 of Senate Bill No. 2029, chapter 240, section 5 of Senate Bill No. 2029, chapter 240, and section 14 of Senate Bill No. 2195, chapter 239.

¹²⁴ Section 26.1-08-12 was also amended by section 2 of Senate Bill No. 2029, chapter 240, section 3 of Senate Bill No. 2029, chapter 240, section 4 of Senate Bill No. 2029, chapter 240, and section 14 of Senate Bill No. 2195, chapter 239.

2. A legislative measure mandating health insurance coverage of services or payment for specified providers of services may not be acted on by any committee of the legislative assembly unless the measure as recommended by the committee provides:
 - a. The measure is effective through June thirtieth of the next odd-numbered year following the year in which the legislative assembly enacted the measure, and after that date the measure is ineffective.
 - b. The application of the mandate is limited to the public employees health insurance program and the public employee retiree health insurance program. The application of such mandate begins with every contract for health insurance which becomes effective after June thirtieth of the year in which the measure becomes effective.
 - c. That for the next legislative assembly, the public employees retirement system shall prepare and request introduction of a bill to repeal the expiration date and to extend the mandated coverage or payment to apply to accident and health insurance policies. The public employees retirement system shall append to the bill a report regarding the effect of the mandated coverage or payment on the system's health insurance programs. The report must include information on the utilization and costs relating to the mandated coverage or payment and a recommendation on whether the coverage or payment should continue. For purposes of this section, the bill is not a legislative measure mandating health insurance coverage of services or payment for specified providers of services, unless the bill is amended following introduction so as to change the bill's mandate.
3. A majority of the members of the committee, acting through the chairman, has sole authority to determine whether a legislative measure mandates coverage of services under this section.
- ~~3.~~ 4. Any amendment made during a legislative session to a measure which mandates health insurance coverage of services may not be acted on by a committee of the legislative assembly unless the amendment is accompanied by a cost-benefit analysis provided by the legislative council.
4. 5. The legislative council shall contract with a private entity, after receiving one or more recommendations from the insurance commissioner, to provide the cost-benefit analysis required by this section. The insurance commissioner shall pay the cost of the contracted services to the entity providing the services.

CHAPTER 241

HOUSE BILL NO. 1141

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

REINSURANCE AGREEMENT NOTICES

AN ACT to amend and reenact subsection 1 of section 26.1-10.1-01 and section 26.1-10.1-03 of the North Dakota Century Code, relating to notice to the insurance commissioner of reinsurance agreements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 26.1-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. Every insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements or material new ceded reinsurance agreements unless the acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements or material new ceded reinsurance agreements have been submitted to the commissioner for review, approval, or information purposes pursuant to other provisions of the insurance code, laws, rules, or other requirements.

SECTION 2. AMENDMENT. Section 26.1-10.1-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-10.1-03. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements.

1. Materiality and scope.
 - a. Nonrenewals, cancellations, or revisions of ceded reinsurance agreements or new ceded reinsurance agreements need not be reported under section 26.1-10.1-01 if the nonrenewals, cancellations, or revisions of ceded reinsurance agreements or new ceded reinsurance agreements are not material. For purposes of this chapter, a material nonrenewal, cancellation, or revision of a ceded reinsurance agreement or a material new ceded reinsurance agreement is one that affects:
 - (1) As respects property and casualty business, including accident and health business written by a property and casualty insurer:
 - (a) More than fifty percent of the insurer's total ceded written premium; or
 - (b) More than fifty percent of the insurer's total ceded indemnity and loss adjustment reserves.

- (2) As respects life, annuity, and accident and health business, more than fifty percent of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement.
- (3) As respects either property and casualty or life, annuity, and accident and health business, either of the following events constitutes a material revision that must be reported:
 - (a) An authorized reinsurer representing more than ten percent of a total cession is replaced by one or more unauthorized reinsurers; or
 - (b) Previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

b. However, filing is not required if:

- (1) As respects property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than ten percent of its total written premium for direct and assumed business; or
- (2) As respects life, annuity, and accident and health business, the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent of the statutory reserve requirement prior to any cession.

2. Information to be reported.

- a. The following information is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements or material new ceded reinsurance agreements:
 - (1) Effective date of the nonrenewal, cancellation, or revision, or new agreement;
 - (2) The description of the transaction with an identification of the initiator of the transaction;
 - (3) Purpose of, or reason for, the transaction; and
 - (4) If applicable, the identity of the replacement reinsurers.

- b. Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements or material new ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers that utilizes a pooling arrangement or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars total direct plus assumed written premiums during a calendar year which are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent of the insurer's capital and surplus.

Approved March 13, 2003
Filed March 13, 2003

CHAPTER 242**HOUSE BILL NO. 1233**
(Representatives Keiser, N. Johnson)
(Senators Klein, Mutch)**NONPROFIT MUTUAL INSURANCE COMPANY
POWERS**

AN ACT to amend and reenact subsection 5 of section 26.1-17-33.1 of the North Dakota Century Code, relating to the powers of nonprofit mutual insurance companies; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 26.1-17-33.1 of the North Dakota Century Code is amended and reenacted as follows:

5. A nonprofit mutual insurance company may form a ~~stock~~ wholly owned company for the purpose of administering medicare claims and engaging in other business activities that do not accept insurance risk. A company established under this subsection may form a joint venture or subsidiary to conduct one or more of the functions the nonprofit mutual insurance company could conduct directly. An officer, a director, or a management employee of the nonprofit mutual insurance company may not directly or indirectly own an interest in a subsidiary.

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

Approved March 7, 2003
Filed March 7, 2003

CHAPTER 243**HOUSE BILL NO. 1216**

(Representatives Drovdal, Kempenich, Nottestad)
(Senators Urlacher, Wardner)

GAME AND FISH LICENSE VENDOR BONDS

AN ACT to amend and reenact section 26.1-21-09.1 of the North Dakota Century Code, relating to bonds for agents distributing hunting and fishing licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-21-09.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-09.1. Bonds of agents appointed to distribute hunting and fishing licenses or stamps - Premiums - Determination of eligibility. The annual premium for a bond of an agent appointed by a county auditor to distribute hunting and fishing licenses or stamps pursuant to section 20.1-03-17 is ten dollars for each five thousand dollars of coverage. The premium must be paid to the fund pursuant to rules adopted by the commissioner. The commissioner shall deposit the premiums with the state treasurer to the credit of the fund. The commissioner may reduce or waive the premium if it is determined that funds received pursuant to this section are sufficient to cover potential claims on the bonds of agents appointed to distribute hunting and fishing licenses or stamps. The commissioner shall determine the conditions and qualifications of agents bonded under this section. The amount of coverage afforded under this section is ~~limited to five thousand dollars, ten thousand dollars, or fifteen~~ thousand dollars per agent per year as determined by the county auditor.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 244

HOUSE BILL NO. 1138

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

REINSURANCE COVERAGE AND BROKER OF RECORD

AN ACT to create and enact section 26.1-22-21.1 of the North Dakota Century Code, relating to insurance broker of record; to amend and reenact sections 26.1-22-05, 26.1-22-10, and 26.1-22-21 of the North Dakota Century Code, relating to buildings insured by the state fire and tornado fund, optional coverage for the state mill and elevator association, and excess loss reinsurance; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-22-05 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-05. Public, international peace garden, and winter show buildings insurable in fund. The public buildings and fixtures and permanent contents therein belonging to the state, the various state industries except the state mill and elevator association if the association exercises the option provided in section 26.1-22-10, and the political subdivisions must, and the buildings and fixtures and the permanent contents therein belonging to an international peace garden or a winter show may, be insured under this chapter. No officer or agent of the state or of any political subdivision, and no person having charge of any public buildings belonging to the state, any state industry, or any political subdivision, may pay out any public moneys or funds on account of any insurance against loss by fire, lightning, inherent explosion, windstorm, cyclone, tornado and hail, explosion, riot attending a strike, aircraft, smoke, vehicles, or any other risks of direct physical loss, or contract in any manner for, or incur any indebtedness against, the state or any political subdivision on account of any such insurance upon any of the buildings or fixtures and permanent contents therein belonging to the state or any political subdivision, except in the manner provided in this chapter.

SECTION 2. 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. 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.

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.

SECTION 3. AMENDMENT. Section 26.1-22-21 of the North Dakota Century Code is amended and reenacted as follows:

26.1-22-21. Insurance required - Excess loss reinsurance. The commissioner shall procure and shall keep in force ~~an~~ excess loss reinsurance ~~contract~~ naming the fund as the reinsured. The excess loss reinsurance must be in an amount and for a period determined by the commissioner to be sufficient for the fund. ~~The reinsurance contract must meet the following minimum specifications:~~

- ~~1. Reimburse~~ reimburse the fund for ~~all losses in excess of one million dollars~~ incurred by the fund under policies issued by the fund and arising out of each occurrence of a ~~peril included in the fund policies.~~
- ~~2. The limit of liability of such reinsurance contract must be no less than one hundred million dollars for each loss occurrence.~~
- ~~3. A covered cause of loss and include at least a sixty-day cancellation notice.~~
- ~~4. The quoted rate must be the guaranteed rate for the two-year bid period.~~

The cost of the excess loss reinsurance must be paid out of the premium income of the fund. This excess and must be assessed against the policyholders that benefit from the reinsurance. ~~Excess loss reinsurance must be procured by the commissioner and the fund only through bids as hereinafter provided and must be written only by a company or companies authorized to do business within this state. The contract must be countersigned by a licensed North Dakota resident insurance producer. On or before the third Monday in June of each odd-numbered year, the commissioner shall publish in the official newspaper of Burleigh County a notice that on the last Monday in June of that year the commissioner will accept bids at the commissioner's office in the state capitol. A copy of the notice must be posted at the office of the fund. A copy of the notice must be mailed to each insurance company licensed to write fire insurance in this state. On the last Monday in June of each odd-numbered year prior to the expiration of the contract, the commissioner, with the approval of the industrial commission, shall contract for the excess loss reinsurance~~

with the company or group of companies submitting the lowest and best bid for the ~~two-year~~ period commencing on the ensuing first day of August. The commissioner, with the approval of the industrial commission, may disregard this section after the commissioner and the commission have studied the available bids for the reinsurance required by this section.

SECTION 4. Section 26.1-22-21.1 of the North Dakota Century Code is created and enacted as follows:

26.1-22-21.1. Insurance broker of record. The fund may contract for insurance broker of record services to assist in procuring excess loss reinsurance by soliciting bids. The fund may award a contract to an insurance broker licensed by, and in good standing with, the state to serve the interests of the fund and its policyholders under this title. The contract must be for the period of a biennium. The fund may renew, renegotiate, or rebid a contract based upon contract performance, cost, and the best interests of the fund and policyholders.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 11, 2003
Filed April 11, 2003

CHAPTER 245

HOUSE BILL NO. 1142

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

INSURER WITHDRAWAL, NONRENEWAL, AND REPORTS

AN ACT to create and enact section 26.1-25-04.4 of the North Dakota Century Code, relating to withdrawal of insurance companies; to amend and reenact subsection 1 of section 26.1-30.1-06 and subsection 1 of section 26.1-39-16 of the North Dakota Century Code, relating to nonrenewal of commercial and homeowner's insurance; and to repeal sections 26.1-01-06, 26.1-03-12, 26.1-03-13, 26.1-03-14, and 26.1-03-15 of the North Dakota Century Code, relating to product liability and legal malpractice reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 26.1-25-04.4 of the North Dakota Century Code is created and enacted as follows:

26.1-25-04.4. Notice of withdrawal. An insurer must provide the commissioner notice in writing of its plan to cease writing and renewing a property and casualty insurance product before the notification of agents and policyholders. The notice must contain the effective date of the plan, the number of policies affected, and the reason therefor.

SECTION 2. AMENDMENT. Subsection 1 of section 26.1-30.1-06 of the North Dakota Century Code is amended and reenacted as follows:

1. An insurer shall renew the policy, unless at least ~~thirty~~ sixty days prior to the date of expiration provided in the policy, a notice of intention not to renew the policy beyond the agreed expiration date is made to the policyholder. The insurer shall include a statement of the reasons for a nonrenewal with the notice.

SECTION 3. AMENDMENT. Subsection 1 of section 26.1-39-16 of the North Dakota Century Code is amended and reenacted as follows:

1. No insurer may fail to renew a property insurance policy unless a written notice of nonrenewal is mailed or delivered to the named insured, at the last-known address of the named insured, at least ~~thirty~~ thirty-fourty-five days prior to the expiration date of the policy, except that when the policy provides professional liability coverage for legal and medical services, the nonrenewal notice must be mailed or delivered at least ninety days prior to the policy expiration date. A postal service certificate of mailing to the named insured at the insured's last-known address is conclusive proof of mailing and receipt on the third calendar day after the mailing.

SECTION 4. REPEAL. Sections 26.1-01-06, 26.1-03-12, 26.1-03-13, 26.1-03-14, and 26.1-03-15 of the North Dakota Century Code are repealed.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 246

HOUSE BILL NO. 1260

(Representatives Koppelman, Grosz, N. Johnson)
(Senators Every, Klein, Krebsbach)

CREDIT INFORMATION USE BY INSURERS

AN ACT to create and enact chapter 26.1-25.1 of the North Dakota Century Code, relating to use of credit information in personal insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-25.1 of the North Dakota Century Code is created and enacted as follows:

26.1-25.1-01. Scope. This chapter applies to personal insurance and does not apply to commercial insurance.

26.1-25.1-02. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Adverse action" means a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of personal insurance.
2. "Affiliate" means any company that controls, is controlled by, or is under common control with another company.
3. "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer.
4. "Consumer" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a policy.
5. "Consumer reporting agency" means any person that for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part 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.
6. "Credit information" means any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. The term does not include information that is not credit related, regardless of whether the information is contained in a credit report or in an application or is used to calculate an insurance score.
7. "Credit report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of

serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

8. "Insurance score" means a number or rating that is derived from an algorithm, a computer application, a model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.
9. "Personal insurance" means private passenger automobile, homeowners, motorcycle, mobile homeowners, and noncommercial dwelling fire insurance policies. Such policies must be individually underwritten for personal, family, or household use. No other type of insurance is included as personal insurance for the purpose of this chapter.

26.1-25.1-03. Use of credit information. An insurer authorized to do business in this state which uses credit information to underwrite or rate risks may not:

1. Use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor.
2. Deny, cancel, or nonrenew a policy of personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by this section.
3. Take an adverse action against a consumer solely because the consumer does not have a credit card account without consideration of any other applicable factor independent of credit information.
4. Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:
 - a. Treats the consumer as otherwise approved by the insurance commissioner if the insurer presents information that such an absence or inability relates to the risk for the insurer.
 - b. Treats the consumer as if the applicant or insured had neutral credit information, as defined by the insurer.
 - c. Excludes the use of credit information as a factor and use only other underwriting criteria.
5. Take an adverse action against a consumer based on credit information, unless an insurer obtains and uses a credit report issued or an insurance score calculated within one hundred twenty days from the date the policy is first written or renewal is issued.
6. Use credit information unless not later than every thirty-six months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score, or obtains an updated credit report. Notwithstanding this section:

- a. At annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall reunderwrite and rerate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a twelve-month period.
 - b. The insurer may obtain current credit information upon any renewal before the thirty-six months if consistent with the insurer's underwriting guidelines.
 - c. An insurer need not obtain current credit information for an insured, despite the requirements of subdivision a, if one of the following applies:
 - (1) The insurer is treating the consumer as otherwise approved by the commissioner.
 - (2) The insured is in the most favorably priced tier of the insurer, within a group of affiliated insurers. However, the insurer may order such report if consistent with the insurer's underwriting guidelines.
 - (3) Credit was not used for underwriting or rating such insured when the policy was initially written. However, the insurer may use credit for underwriting or rating such insured upon renewal if consistent with the insurer's underwriting guidelines.
 - (4) The insurer reevaluates the insured beginning no later than thirty-six months after inception and thereafter based upon other underwriting or rating factors, excluding credit information.
7. Use the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a policy of personal insurance:
- a. Credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer's own credit information.
 - b. Inquiries relating to insurance coverage if so identified on a consumer's credit report.
 - c. Collection accounts with a medical industry code if so identified on the consumer's credit report.
 - d. Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within thirty days of one another, unless only one inquiry is considered.
 - e. Multiple lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within thirty days of one another, unless only one inquiry is considered.

26.1-25.1-04. Dispute resolution and error correction. If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act [Pub. L. 90-321; 15 U.S.C. 1681i(a)(5)] that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall reunderwrite and re-rate the consumer within thirty days of receiving the notice. After reunderwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with the insurer's underwriting and rating guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last twelve months of coverage or the actual policy period.

26.1-25.1-05. Initial notification.

1. If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or the insurer's agent shall disclose, either on the insurance application or at the time the insurance application is taken, that the insurer or the insurer's agent may obtain credit information in connection with such application. Such disclosure must be either written or provided to an applicant in the same medium as the application for insurance. The insurer or the insurer's agent need not provide the disclosure statement required under this section to any insured on a renewal policy if such consumer has previously been provided a disclosure statement.
2. Use of the following example disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score."

26.1-25.1-06. Adverse action notification. If an insurer takes an adverse action based upon credit information, the insurer must meet the notice requirements of this section. The insurer shall:

1. Provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act [Pub. L. 90-321; 15 U.S.C. 1681m(a)]; and
2. Provide notification to the consumer explaining the reason for the adverse action. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take an adverse action. The notification must include a description of up to four factors that were the primary influences of the adverse action. The use of generalized terms such as "poor credit history", "poor credit rating", or "poor insurance score" does not meet the explanation requirements of this subsection. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors are deemed to comply with this section.

26.1-25.1-07. Filing.

1. An insurer that uses insurance scores to underwrite or rate risks shall file the insurer's scoring models or other scoring processes with the insurance department. A third party may file scoring models on behalf

of an insurer. A filing that includes insurance scoring must include loss experience justifying the use of credit information.

2. Any filing relating to credit information is considered a trade secret under chapter 47-25.1.

26.1-25.1-08. Indemnification. An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of a producer who obtains or uses credit information or insurance scores for an insurer, provided the producer follows the instructions of or procedures established by the insurer and complies with any applicable law or rule. This section does not provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

26.1-25.1-09. Sale of policy term information by consumer reporting agency.

1. A consumer reporting agency may not provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. Such information includes the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer's insurance may expire and the terms and conditions of the consumer's insurance coverage.
2. Subsection 1 does not apply to data or lists the consumer reporting agency supplies to the insurance producer from whom information was received, the insurer on whose behalf such producer acted, or such insurer's affiliates or holding companies.
3. This section does not restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

26.1-25.1-10. Severability. If any provision of this chapter is declared invalid due to an interpretation of or a future change in the federal Fair Credit Reporting Act [Pub. L. 90-321; 15 U.S.C. 1681 et seq.], the remaining provisions of this chapter are not affected and remain in effect.

26.1-25.1-11. Application. This chapter applies to personal insurance policies either written to be effective or renewed after April 30, 2004.

Approved April 4, 2003
Filed April 7, 2003

CHAPTER 247**HOUSE BILL NO. 1264**
(Representative Wald)**CONTROLLED INSURANCE BUSINESS PROHIBITED**

AN ACT to create and enact a new section to chapter 26.1-26 of the North Dakota Century Code, relating to a controlled insurance business.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 26.1-26 of the North Dakota Century Code is created and enacted as follows:

Controlled business prohibited - Definition - Formula for determination.

1. As used in this section, unless the context otherwise requires, "controlled business" means insurance written on the interests of the licensee, licensee's immediate family, or licensee's employer; or insurance covering the licensee, the members of the licensee's immediate family, a business entity, or the officers, directors, substantial stockholders, partners, or employees of such a business entity of which the licensee or a member of the licensee's immediate family is an officer, a director, a substantial stockholder, a partner, an associate, or an employee. "Controlled business" does not include crop insurance business sold by a business entity licensed as an insurance producer for crop insurance between August 1, 2001, and December 31, 2002.
2. The commissioner may not grant, renew, continue, or permit to continue any license if the commissioner determines that the license is being or will be used by the applicant or licensee for the purpose of writing controlled business. A license is deemed to have been or intended to be used for the purpose of writing controlled business if the commissioner determines that during any twelve-month period the aggregate commissions earned from the controlled business exceeded thirty-five percent of the aggregate commissions earned on all business written by the licensee during the same period.
3. This section does not apply to insurance written in connection with credit transactions, including title insurance.

Approved April 21, 2003
Filed April 22, 2003

CHAPTER 248

SENATE BILL NO. 2184

(Senators Brown, J. Lee)
(Representatives Devlin, Price)

UTILIZATION REVIEW AGENT STANDARDS

AN ACT to amend and reenact section 26.1-26.4-04 of the North Dakota Century Code, relating to minimum standards for utilization review agents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-26.4-04 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.4-04. Minimum standards of utilization review agents. All utilization review agents must meet the following minimum standards:

1. Notification of a determination by the utilization review agent must be ~~mailed or otherwise communicated to the provider of record or the enrollee or other appropriate individual within two business days of the receipt of the request for determination and the receipt of all information necessary to complete the review.~~ In the case of a retrospective review, the utilization review agent has five business days after receipt of all information necessary to complete the review to notify the provider of record, enrollee, or appropriate individual provided to the enrollee or other appropriate individual in accordance with 29 U.S.C. 1133 and the timeframes set forth in 29 CFR 2560.503-1.
2. Any determination by a utilization review agent as to the necessity or appropriateness of an admission, service, or procedure must be reviewed by a physician or, if appropriate, a licensed psychologist, or determined in accordance with standards or guidelines approved by a physician or licensed psychologist.
3. Any notification of a determination not to certify an admission or service or procedure must include the ~~principal reason for the determination and the procedures to initiate an appeal of the determination~~ information required by 29 U.S.C. 1133 and 29 CFR 2560.503-1.
4. Utilization review agents shall maintain and make available a written description of the appeal procedure by which enrollees or the provider of record may seek review of determinations by the utilization review agent. The appeal procedure must provide for the following:
 - a. On appeal, all determinations not to certify an admission, service, or procedure as being necessary or appropriate must be made by a physician or, if appropriate, a licensed psychologist.
 - b. Utilization review agents shall complete the adjudication of appeals of determinations not to certify admissions, services, and procedures ~~no later than thirty days from the date the appeal is filed and the receipt of all information necessary to complete the~~

~~appeal~~ in accordance with 29 U.S.C. 1133 and the timeframes for appeals set forth in 29 CFR 2560.503-1.

- c. Utilization review agents shall provide for an expedited appeals process for emergency or life-threatening situations complying with 29 U.S.C. 1133 and 29 CFR 2560.503-1. ~~Utilization review agents shall complete the adjudication of expedited appeals within forty-eight hours of the date the appeal is filed and the receipt of all information necessary to complete the appeal. The expedited appeals process is not applicable to retrospective reviews.~~
5. Utilization review agents shall make staff available by toll-free telephone at least forty hours per week during normal business hours.
6. Utilization review agents shall have a telephone system capable of accepting or recording incoming telephone calls during other than normal business hours and shall respond to these calls within two working days.
7. Utilization review agents shall comply with all applicable laws to protect confidentiality of individual medical records.
8. Psychologists making utilization review determinations shall have current licenses from the state board of psychologist examiners. Physicians making utilization review determinations shall have current licenses from the state board of medical examiners.
9. When conducting utilization review or making a benefit determination for emergency services:
 - a. A utilization review agent may not deny coverage for emergency services and may not require prior authorization of these services.
 - b. Coverage of emergency services is subject to applicable copayments, coinsurance, and deductibles.
10. When an initial appeal to reverse a determination is unsuccessful, a subsequent determination regarding hospital, medical, or other health care services provided or to be provided to a patient which may result in a denial of third-party reimbursement or a denial of precertification for that service must include the evaluation, findings, and concurrence of a physician trained in the relevant specialty to make a final determination that care provided or to be provided was, is, or may be medically inappropriate. ~~Subsequent determinations for retrospective reviews must be completed no later than thirty days from the date the appeal is filed and all information necessary to complete the appeal is received.~~

However, the commissioner may find that the standards in this section have been met if the utilization review agent has received approval or accreditation by a utilization review accreditation organization.

Approved March 20, 2003
Filed March 20, 2003

CHAPTER 249**HOUSE BILL NO. 1371**

(Representative Ruby)

BAIL BONDSMAN MAXIMUM FEE

AN ACT to amend and reenact section 26.1-26.6-08 of the North Dakota Century Code, relating to the maximum commission or fee of a bail bondsman.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-26.6-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.6-08. Maximum commission or fee. A professional bondsman may not charge a premium, commission, or fee for a bond in an amount more than ten percent of the amount of bail furnished by the bondsman, or ~~fifty~~ seventy-five dollars, whichever is greater.

Approved April 7, 2003

Filed April 7, 2003

CHAPTER 250**HOUSE BILL NO. 1415**
(Representatives Maragos, Kretschmar)**FORFEITURE RETURN TO BONDSMAN**

AN ACT to amend and reenact section 26.1-26.6-09 of the North Dakota Century Code, relating to the return of a forfeiture to a bondsman.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-26.6-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-26.6-09. Failure to appear. If a defendant fails to appear for a scheduled court appearance, the clerk of court ~~will~~ shall notify the bondsman. If the bondsman returns the defendant to the jurisdiction of the court, the bondsman may petition the court for a return of the forfeiture. If the bondsman returns the defendant to the jurisdiction of the court within six months of receiving notice of the failure to appear, the court shall return the forfeiture upon petition by the bondsman, less five percent for court costs. If the bondsman returns the defendant to the jurisdiction of the court beyond six months of receiving notice of the failure to appear, the court may return the forfeiture upon receipt of a petition from the bondsman, less five percent for court costs.

Approved April 9, 2003
Filed April 9, 2003

CHAPTER 251**SENATE BILL NO. 2224**

(Senator Klein)
(Representative Wald)

**EFFICIENT PROXIMATE CAUSE DOCTRINE
APPLICATION**

AN ACT to amend and reenact sections 26.1-32-01 and 26.1-32-03 of the North Dakota Century Code, relating to liability of the insurer for loss.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-32-01. Liability of insurer for loss - Proximate and remote cause. An insurer is liable for a loss proximately caused by a peril insured against even though a peril not contemplated by the insurance contract may have been a remote cause of the loss. An insurer is not liable for a loss of which the peril insured against was only a remote cause. The efficient proximate cause doctrine applies only if separate, distinct, and totally unrelated causes contribute to the loss.

SECTION 2. AMENDMENT. Section 26.1-32-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-32-03. Insurer not liable for excepted peril. When a peril is excepted specially in an insurance contract, a loss which would not have occurred but for that peril is excepted although the immediate cause of the loss was a peril which was not excepted. An insurer may contract out of the efficient proximate cause doctrine.

Approved March 24, 2003
Filed March 24, 2003

CHAPTER 252

HOUSE BILL NO. 1139

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

INSURABLE INTEREST AND INTEREST ON CLAIMS

AN ACT to create and enact a new subsection to section 26.1-33-11 of the North Dakota Century Code, relating to interest paid on death claims by insurance companies; and to amend and reenact subdivision e of subsection 3 of section 26.1-29-09.1, subdivision c of subsection 2 of section 26.1-37-01, and subdivision a of subsection 1 of section 26.1-38.1-03 of the North Dakota Century Code, relating to insurable interest in personal insurance, credit insurance on motor vehicles, and life insurance and annuity accounts maintained by the life and health insurance guaranty association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-33-11 of the North Dakota Century Code is created and enacted as follows:

A provision that the settlement of a death claim must be made upon receipt of due proof of death, or not later than two months after receipt of the proof of death, and must include reasonable interest accrued from the date of death so long as a proof of death is filed within one hundred eighty days after the date of the death.

SECTION 2. AMENDMENT. Subdivision e of subsection 3 of section 26.1-29-09.1 of the North Dakota Century Code is amended and reenacted as follows:

- e. In the case of a corporation or the trustee of a trust providing life, health, disability, retirement, or similar benefits to employees of one or more corporations, and acting in a fiduciary capacity with respect to the employees, retired employees, or their dependents or beneficiaries, a corporation or the trustee of a trust has an insurable interest in the lives of employees for whom the benefits are to be provided and the corporation or trustee of a trust may purchase, accept, or otherwise acquire an interest in personal insurance as a beneficiary or owner. ~~The~~ Written consent of the insured individual is required if the personal insurance purchased names the corporation or the trustee of a trust as a beneficiary. ~~The consent requirement is satisfied if the insured individual is provided written notice of the coverage and does not reject the coverage within thirty days of receipt of the notice.~~

SECTION 3. AMENDMENT. Subdivision c of subsection 2 of section 26.1-37-01 of the North Dakota Century Code is amended and reenacted as follows:

- c. ~~Insurance on motor vehicles designed for highway use and on mobile homes~~ Private passenger motor vehicle insurance or mobile homeowner's insurance;

SECTION 4. AMENDMENT. Subdivision a of subsection 1 of section 26.1-38.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- a. The life insurance and annuity account that includes the following subaccounts:
 - (1) Life insurance account;
 - (2) Annuity account, which includes annuity contracts owned by a governmental retirement plan or its trustee established under section 401, 403(b), or 457 of the United States Internal Revenue Code, but otherwise excludes unallocated annuities; and
 - (3) Unallocated annuity account that ~~includes~~ excludes contracts owned by a governmental retirement benefit plan or its trustee established under section 401, 403(b), or 457 of the United States Internal Revenue Code.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 253

SENATE BILL NO. 2122

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

VIATICAL SETTLEMENT PROVIDER LICENSING

AN ACT to amend and reenact subsection 4 of section 26.1-33.2-02 of the North Dakota Century Code, relating to annual licenses of viatical settlement providers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 26.1-33.2-02 of the North Dakota Century Code is amended and reenacted as follows:

4. Licenses must be renewed from year to year on ~~the anniversary date~~ May first upon payment of the annual renewal ~~fees~~ fee of one hundred fifty dollars. ~~Failure to pay the fees by the renewal date results in expiration of the license.~~ A license not renewed by May first automatically expires. License fees due May 1, 2003, must be prorated in relation to the prior year's renewal date.

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

Approved March 14, 2003
Filed March 17, 2003

CHAPTER 254

SENATE BILL NO. 2235 (Senators Every, Klein)

ANNUITY CONTRACT NONFORFEITURE AMOUNTS

AN ACT to amend and reenact section 26.1-34-02 of the North Dakota Century Code, relating to minimum nonforfeiture amounts of annuity contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-34-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-34-02. Minimum nonforfeiture amount defined. The minimum values as specified in sections 26.1-34-03 through 26.1-34-06 and section 26.1-34-08 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract must be based upon minimum nonforfeiture amounts as defined in this section:

1. For an annuity contract issued before August 1, 2003:
 - a. With respect to annuity contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments must be equal to an accumulation up to such time at a rate of interest of three percent per year of percentages of the net considerations, as hereinafter defined, paid prior to such time, decreased by the sum of any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent per year and the amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract. The net considerations for a given contract year used to define the minimum nonforfeiture amount must be an amount not less than zero and must equal the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents for each consideration credited to the contract during that contract year. The percentages of net considerations must be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the preceding sentence, the percentage must be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent.
 - ~~b.~~ b. With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts must be calculated on the assumption that considerations are paid annually in

advance and must be defined as for contracts with flexible considerations which are paid annually, with two exceptions:

- a. (1) The portion of the net consideration for the first contract year to be accumulated is the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.
 - b. (2) The annual contract charge is the lesser of thirty dollars or ten percent of the gross annual considerations.
3. c. With respect to contracts providing for a single consideration, minimum nonforfeiture amounts must be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount must equal ninety percent and the net consideration must be the gross consideration less a contract charge of seventy-five dollars.
2. For an annuity contract issued after July 31, 2005:
- a. The minimum nonforfeiture amount at any time at or before the commencement of any annuity payments must be equal to an accumulation up to such time at rates of interest, as provided under subdivision c, of the net considerations, as defined under subdivision b, paid before such time, decreased by the sum of:
 - (1) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as provided under subdivision c;
 - (2) An annual contract charge of fifty dollars, accumulated at rates of interest as provided under subdivision c;
 - (3) Any premium tax paid by the company for the contract, accumulated at rates of interest as provided under subdivision c; and
 - (4) The amount of any indebtedness to the company on the contract, including interest due and accrued.
 - b. The net considerations for a given contract year used to define the minimum nonforfeiture amount under subdivision a must be an amount equal to eighty-seven and one-half percent of the gross considerations credited to the contract during that contract year.
 - c. The interest rate used in determining minimum nonforfeiture amounts must be determined as the lesser of:
 - (1) Three percent per annum; or
 - (2) The five-year constant maturity rate reported by the federal reserve as of a date or average over a period, reduced by one hundred twenty-five basis points. The rate calculated under this paragraph may not be less than one percent,

must be specified in the contract, and must be determined no more than fifteen months before the contract issue date or redemption date.

- d. The interest rate used in determining minimum nonforfeiture amounts applies for an initial period and may be redetermined for additional periods. The redetermination date basis and period, if any, must be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.
 - e. Notwithstanding subdivisions a, b, c, and d, during the period or term that a contract provides substantive participation in an equity indexed benefit, the contract may increase the reduction of one hundred twenty-five basis points under paragraph 2 of subdivision c by an amount not to exceed one hundred basis points, in order to reflect the value of the equity index benefit. The present value at the contract issue date, the present value at each redetermination date, or the additional reduction may not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the reduction does not exceed the market value of the benefit. Lacking such a demonstration acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.
 - f. The commissioner may adopt rules to implement the provisions of subdivision e and to provide further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts if the commissioner determines that adjustments are justified.
3. For an annuity contract issued after July 31, 2003, and before August 1, 2005, on a contract form by contract form basis, a company may elect to apply the provisions of subsection 1 or subsection 2.

Approved April 23, 2003
Filed April 23, 2003

CHAPTER 255

SENATE BILL NO. 2210 (Senators Nelson, Grindberg, Kilzer) (Representatives Keiser, Metcalf, Price)

SUBSTANCE ABUSE TREATMENT COVERAGE

AN ACT to create and enact a new section to chapter 26.1-36 of the North Dakota Century Code, relating to alternative group health policy and health service contract substance abuse coverage; and to amend and reenact section 26.1-36-08 of the North Dakota Century Code, relating to group health policy and health service contract substance abuse coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁵ **SECTION 1. AMENDMENT.** Section 26.1-36-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36-08. Group health policy and health service contract substance abuse coverage.

1. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy or health service contract on a group or, blanket or, franchise, or association basis unless the policy or contract provides benefits, of the same type offered under the policy or contract for other illnesses, for health services to any ~~person~~ individual covered under the policy or contract, for the diagnosis, evaluation, and treatment of alcoholism, drug addiction, or other related illness, which benefits meet or exceed the benefits provided in subsection 2.
2. The benefits must be provided for inpatient treatment ~~and,~~ treatment by partial hospitalization, and outpatient treatment:
 - a. In the case of benefits provided for inpatient treatment, the benefits must be provided for a minimum of sixty days of services covered under this section and section 26.1-36-09 in any calendar year if ~~provided by a hospital as defined in subsection 25 of section 52-01-04 and rules of the state department of health pursuant thereto, or as licensed under section 23-17.1-04 offering treatment for the prevention or cure of alcoholism, drug addiction, or other related illness.~~ Services provided under this subdivision must be provided by an addiction treatment program licensed under chapter 50-31.
 - b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred twenty

¹²⁵ Section 26.1-36-08 was also amended by section 2 of House Bill No. 1165, chapter 432.

days of services covered under this section and section 26.1-36-09 in any calendar year if. Services provided under this subdivision must be provided by a hospital as defined in subsection 25 of section 52-01-04 and rules of the state department of health pursuant thereto or as licensed under section 23-17.1-04, or by a regional human service center an addiction treatment program licensed under section 50-06-05.2, offering treatment for the prevention or cure of alcoholism, drug addiction, or other related illness chapter 50-31. For services provided in regional human service centers, charges must be reasonably similar to the charges for care provided by hospitals as defined in this subsection.

- c. Benefits may also be provided for a combination of inpatient and partial hospitalization treatment. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by partial hospitalization; provided, however, that no more than forty-six days of the inpatient treatment benefits required by this section may be traded for treatment by partial hospitalization.
 - d. In the case of benefits provided for outpatient treatment, the benefits must be provided for a minimum of twenty visits for services covered under this section in any calendar year, provided the diagnosis, evaluation, and treatment services are provided within the scope of licensure by a licensed physician, a licensed psychologist who is eligible for listing on the national register of health service providers in psychology, or the treatment services are provided within the scope of licensure by a licensed addiction counselor. The insurance company, nonprofit health service corporation, or health maintenance organization may not establish a deductible or a copayment for the first five visits in any calendar year, and may not establish a copayment greater than twenty percent for the remaining visits.
 - e. If the services are provided by a provider outside a preferred provider network without a referral from within the network, the insurance company, nonprofit health service corporation, or health maintenance organization may establish a copayment greater than twenty percent for only those visits after the first five visits in any calendar year.
 - f. "Partial hospitalization" As used in this section and section 2 of this Act, partial hospitalization means continuous treatment for at least three hours, but not more than twelve hours, in any twenty-four-hour period and includes the medically necessary treatment services provided by licensed professionals under the supervision of a licensed physician.
3. This section does not prevent any insurance company, nonprofit health service corporation, or health maintenance organization from issuing, delivering, or renewing, at its option, any policy or contract containing provisions similar to those required by this section, when the policy or contract is not subject to such provisions.

SECTION 2. A new section to chapter 26.1-36 of the North Dakota Century Code is created and enacted as follows:

Alternative group health policy and health service contract substance abuse coverage.

1. As an alternative to the substance abuse coverage required under subsection 2 of section 26.1-36-08, an insurance company, a nonprofit health service corporation, or a health maintenance organization may provide substance abuse coverage under this section.
2. The provisions of section 26.1-36-08 apply to this alternative, except:
 - a. In addition to the inpatient treatment, treatment by partial hospitalization, and outpatient treatment coverage required under section 26.1-36-08, the coverage must include residential treatment.
 - b. In the case of coverage for inpatient treatment, the benefits must be provided for a minimum of forty-five days of services covered under this section and section 26.1-36-09 in any calendar year.
 - c. For the purpose of computing the period for which benefits are payable for a combination of inpatient and partial hospitalization, no more than twenty-three days of inpatient treatment benefits required under subdivision a may be traded for treatment by partial hospitalization.
 - d. In the case of coverage for residential treatment, the benefits must be provided for a minimum of sixty days of services covered under this section in any calendar year. This residential treatment must be provided by an addiction treatment program licensed under chapter 50-31. If an individual receiving residential treatment services requires more than sixty days of residential treatment services, unused inpatient treatment benefits provided for under subdivision b may be traded for residential treatment benefits. For the purpose of computing the period for which benefits are payable, each day of inpatient treatment is equivalent to two days of treatment by a residential treatment program, provided that no more than twenty-three days of inpatient treatment benefits required by this section may be traded for residential treatment benefits required under this section.

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 256

SENATE BILL NO. 2120

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

SMALL EMPLOYER REINSURANCE PROGRAM

AN ACT to amend and reenact section 26.1-36.3-01 and subsection 2 of section 26.1-36.3-04 of the North Dakota Century Code, relating to the small employer carrier health reinsurance program; and to repeal sections 26.1-36.3-07 and 26.1-36.3-09 of the North Dakota Century Code, relating to the small employer carrier health reinsurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-36.3-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-36.3-01. Definitions. As used in this chapter and section 26.1-36-37.2, unless the context otherwise requires:

1. "Actuarial certification" means a written statement by a member of the American academy of actuaries, or other individual acceptable to the insurance commissioner, that a small employer carrier is in compliance with section 26.1-36.3-04, based upon the person's examination of the small employer carrier, including a review of the appropriate records and the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.
2. "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.
3. "Association" means, with respect to health insurance coverage offered in this state, an association that:
 - a. Has been actively in existence for at least five years;
 - b. Has been formed and maintained in good faith for purposes other than obtaining insurance;
 - c. Does not condition membership in the association on any health status-related factor relating to an individual, including an employee or dependent of an employee;
 - d. Makes health insurance coverage offered through the association available to all members regardless of any health status-related factor relating to the members, or individuals eligible for coverage through a member; and
 - e. Does not make health insurance coverage offered through the association available other than in connection with a member of the association.

4. "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.
5. "Basic health benefit plan" means a lower cost health benefit plan developed under section 26.1-36.3-08.
6. ~~"Board" means the board of directors of the program established under section 26.1-36.3-07.~~
7. "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer; however, claim experience, health status, and duration of coverage are not case characteristics.
- ~~8.~~ 7. "Church plan" has the meaning given the term under section 3(33) of the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.].
- ~~9.~~ 8. "Class of business" means all or a separate grouping of small employers established under section 26.1-36.3-03.
- ~~10.~~ 9. "Committee" means the health benefit plan committee created under section 26.1-36.3-08.
- ~~11.~~ 10. "Control" is as defined in section 26.1-10-01.
- ~~12.~~ 11. "Dependent" means a spouse, an unmarried child, including a dependent of an unmarried child, under the age of twenty-two, an unmarried child who is a full-time student under the age of twenty-six and who is financially dependent upon the enrollee, and an unmarried child, including a dependent of an unmarried child, of any age who is medically certified as disabled and dependent upon the enrollee as set forth in section 26.1-36-22.
- ~~13.~~ 12. "Eligible employee" means an employee who works on a full-time basis and has a normal workweek of thirty or more hours. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include an employee who works on a part-time, temporary, or substitute basis.
- ~~14.~~ 13. "Enrollee" means a person covered under a small employer health benefit plan.
- ~~15.~~ 14. "Established geographic service area" means a geographic area, as approved by the insurance commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.
- ~~16.~~ 15. "Governmental plan" means an employee welfare benefit plan as defined in section 3(32) of the Employee Retirement Income Security

Act of 1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.] or any federal government plan.

- ~~47.~~ 16. "Group health benefit plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.] to the extent that the plan provides medical care as defined in this section and including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise. For purposes of this chapter:
- a. A plan, fund, or program that would not be, but for this section, an employee welfare benefit plan and which is established or maintained by a partnership, to the extent that the plan, fund, or program provides medical care, including items and services paid for as medical care, to present or former partners in the partnership, or to their dependents, as defined under the terms of the plan, fund, or program, directly or through insurance, reimbursement, or otherwise, must be treated as an employee welfare benefit plan which is a group health benefit plan;
 - b. In the case of a group health benefit plan, the term "employer" also includes the partnership in relationship to any partner; and
 - c. In the case of a group health benefit plan, the term "participant" also includes:
 - (1) In connection with a group health benefit plan maintained by a partnership, an individual who is a partner in relation to the partnership; or
 - (2) In connection with a group health benefit plan maintained by a self-employed individual, under which one or more employees are participants, the self-employed individual, if the individual is, or may become, eligible to receive benefits under the plan or the beneficiaries may be eligible to receive any benefit.
- ~~48.~~ 17. a. "Health benefit plan" means any hospital or medical or major medical policy, certificate, or subscriber contract.
- b. "Health benefit plan" does not include one or more, or any combination of, the following:
- (1) Coverage only for accident, or disability income insurance, or any combination thereof;
 - (2) Coverage issued as a supplement to liability insurance;
 - (3) Liability insurance, including general liability insurance and automobile liability insurance;
 - (4) Workers' compensation or similar insurance;
 - (5) Automobile medical payment insurance;

- (6) Credit-only insurance;
 - (7) Coverage for onsite medical clinics; and
 - (8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance.
- c. "Health benefit plan" 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;
 - (2) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or
 - (3) Such other similar, limited benefits as are specified in federal regulations.
- d. "Health benefit plan" does not include 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, and any exclusion of benefits under any group health benefit plan 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 plan sponsor:
- (1) Coverage only for specified disease or illness; or
 - (2) Hospital indemnity or other fixed indemnity insurance.
- e. "Health benefit plan" does not include the following if offered as a separate policy, certificate, or contract of insurance:
- (1) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;
 - (2) Coverage supplemental to the coverage provided under 10 U.S.C. 55; and
 - (3) Similar supplemental coverage provided under a group health plan.
- f. A carrier offering a policy or certificate of specified disease, hospital confinement indemnity, or limited benefit health insurance shall comply with the following:
- (1) File with the insurance commissioner on or before March first of each year a certification that contains:
 - (a) A statement from the carrier certifying that the policy or certificate is being offered and marketed as supplemental health insurance and not as a substitute

for hospital or medical expense insurance or major medical expense insurance.

- (b) A summary description of the policy or certificate, including the average annual premium rates, or range of premium rates in cases when premiums vary by age, gender, or other factors, charged for the policy and certificate in this state.

- (2) When the policy or certificate is offered for the first time in this state on or after August 1, 1993, file with the commissioner the information and statement required in paragraph 1 at least thirty days before the date the policy or certificate is issued or delivered in this state.

~~49.~~ 18. "Health carrier" or "carrier" means any entity that provides health insurance in this state. For purposes of this chapter, health carrier includes an insurance company, a prepaid limited health service corporation, a fraternal benefit society, a health maintenance organization, nonprofit health service corporation, and any other entity providing a plan of health insurance or health benefits subject to state insurance regulation.

~~20.~~ 19. "Health status-related factor" means any of the following factors:

- a. Health status;
- b. Medical condition, including both physical and mental illness;
- c. Claims experience;
- d. Receipt of health care;
- e. Medical history;
- f. Genetic information;
- g. Evidence of insurability, including condition arising out of acts of domestic violence; or
- h. Disability.

~~24.~~ 20. "Index rate" means, for each class of business as to a rating period for small employers with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

~~22.~~ 21. "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual is entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period is a period of at least thirty days. An eligible employee or dependent may not be considered a late enrollee, however, if:

- a. The individual:

- (1) Was covered under qualifying previous coverage at the time of the initial enrollment;
 - (2) Lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, death of a spouse, or divorce; and
 - (3) Requests enrollment within thirty days after termination of the qualifying previous coverage.
- b. The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.
 - c. A court has ordered coverage be provided for a spouse or minor or dependent child under a covered employee's health benefit plan and request for enrollment is made within thirty days after issuance of the court order.
 - d. The individual had coverage under a Consolidated Omnibus Budget Reconciliation Act [Pub. L. 99-272; 100 Stat. 82] continuation provision and the coverage under that provision was exhausted.
- ~~23.~~ 22. "Medical care" means amounts paid for:
- a. The diagnosis, care, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;
 - b. Transportation primarily for and essential to medical care referred to in subdivision a; and
 - c. Insurance covering medical care referred to in subdivisions a and b.
- ~~24.~~ 23. "Network plan" means health insurance coverage offered by a health carrier under which the financing and delivery of medical care, including items and services paid for as medical care, are provided, in whole or in part, through a defined set of providers under contract with the carrier.
- ~~25.~~ 24. "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered, or which could have been charged or offered, by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.
- ~~26.~~ "~~Plan of operation~~" means the plan of operation of the program established under ~~section 26.1-36.3-07.~~
- ~~27.~~ 25. "Plan sponsor" has the meaning given the term under section 3(16)(B) of the Employee Retirement Income Security Act of 1974 [Pub. L. 93-406; 88 Stat. 829; 29 U.S.C. 1001 et seq.].

- ~~28.~~ 26. "Premium" means money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.
- ~~29.~~ 27. "Producer" means insurance producer.
- ~~30.~~ 28. ~~"Program" means the state small employer carrier reinsurance program created under section 26.1-36.3-07.~~
- ~~31.~~ 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; 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)].
- The term "qualifying previous coverage" does not include coverage of benefits excepted from the definition of a "health benefit plan" under subsection ~~48~~ 17.
- ~~32.~~ 29. "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.
- ~~33.~~ 30. "Reinsuring carrier" means a small employer carrier which reinsures individuals or groups with the program.
- ~~34.~~ 31. "Restricted network provision" means any provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier under chapters 26.1-17, 26.1-18, and 26.1-47 to provide health care services to covered individuals.
- ~~35.~~ 32. "Small employer" means, in connection with a group health plan with respect to a calendar and a plan year, an employer who employed an average of at least two but not more than fifty eligible employees on

business days during the preceding calendar year and who employs at least two employees on the first day of the plan year.

- ~~36.~~ 33. "Small employer carrier" means any carrier that offers health benefit plans covering eligible employees of one or more small employers in this state.
- ~~37.~~ 34. "Standard health benefit plan" means a health benefit plan developed under section 26.1-36.3-08.

SECTION 2. AMENDMENT. Subsection 2 of section 26.1-36.3-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Premium rates for health benefit plans subject to this section and section 26.1-36-37.2 are subject to the following:
 - a. The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than fifteen percent.
 - b. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates that could be charged to the employers under the rating system for that class of business, may not vary from the index rate by more than twenty percent of the index rate.
 - c. The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of:
 - (1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;
 - (2) Any adjustment due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business; however, the adjustment may not exceed fifteen percent annually and must be adjusted pro rata for rating periods of less than one year; and
 - (3) Any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

- d. Adjustments in rates for claim experience, health status, and duration of coverage may not be charged to individual employees or dependents. Premium rates charged for a health benefit plan may not vary by a ratio of greater than four to one after January 1, 1997. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.
- e. ~~Premium rates for health benefit plans must comply with the requirements of this section notwithstanding any assessment paid or payable by a small employer carrier pursuant to section 26.1-36.3-07.~~
- f. A small employer carrier may utilize industry as a case characteristic in establishing premium rates, but the highest rate factor associated with any industry classification may not exceed the lowest rate factor associated with any industry classification by more than fifteen percent.
- ~~g.~~ f. In the case of health benefit plans delivered or issued for delivery before August 1, 1993, a premium rate for a rating period may exceed the ranges set forth in subdivisions a and b for a period of three years following August 1, 1993. Under this subdivision, the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of:
 - (1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers.
 - (2) Any adjustment due to change in coverage or change in the case characteristics of the small employer, as determined from the carrier's rate manual for the class of business.
- ~~h.~~ g. (1) Small employer carriers shall apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premiums for identical groups which differ only by amounts attributable to plan design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans.
- (2) A small employer carrier shall treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.
- ~~i.~~ h. For the purposes of this subsection, a health benefit plan that uses a restricted provider network may not be considered similar coverage to a health benefit plan that does not use a restricted

provider network, if the use of the restricted provider network results in substantial differences in claims costs.

- ~~j~~ i. A small employer carrier may not use case characteristics, other than age, gender, industry, geographic area, family composition, and group size, without prior approval of the commissioner. Gender may not be used as a case characteristic after January 1, 1996.

- ~~k~~ j. The commissioner shall adopt rules to:
 - (1) Assure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences due to the nature of the groups assumed to select particular health benefit plans;
 - (2) Prescribe the manner in which case characteristics may be used by small employer carriers; and
 - (3) Otherwise implement this section.

SECTION 3. REPEAL. Sections 26.1-36.3-07 and 26.1-36.3-09 of the North Dakota Century Code are repealed.

Approved March 14, 2003
Filed March 17, 2003

CHAPTER 257**SENATE BILL NO. 2281**
(Senators Nething, Heitkamp)
(Representatives Ekstrom, Severson)**SMALL EMPLOYER HEALTH BENEFIT PLANS**

AN ACT to amend and reenact subparagraph a of paragraph 3 of subdivision d of subsection 3 of section 26.1-36.3-06 of the North Dakota Century Code, relating to small employer health benefit plans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subparagraph a of paragraph 3 of subdivision d of subsection 3 of section 26.1-36.3-06 of the North Dakota Century Code is amended and reenacted as follows:

- (3) (a) Except as provided in subparagraph b, a small employer carrier, in applying minimum participation requirements with respect to a small employer, ~~shall~~ may not consider employees or dependents who have qualifying existing coverage in determining whether the applicable percentage of participation is met. For purposes of determining the applicable percentage of participation under this subparagraph only, individual health benefit plans are not included in the definition of "qualifying existing coverage" under section 26.1-36.3-01.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 258

HOUSE BILL NO. 1190

(Representative Wald)

MOTORIST INSURANCE AND SALVAGE TITLES

AN ACT to create and enact a new subsection to section 26.1-40-15.2 and a new subsection to section 26.1-40-15.3 of the North Dakota Century Code, relating to uninsured and underinsured motorists; and to amend and reenact sections 26.1-41-20 and 39-05-20.2 of the North Dakota Century Code, relating to motor vehicle accidents and salvage certificates of title.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 26.1-40-15.2 of the North Dakota Century Code is created and enacted as follows:

In any claim for uninsured motorist benefits, the insured and the insurer each bear responsibility for one's own attorney's fees incurred unless the insurance contract specifically provides otherwise or the insurance company is found to have acted in bad faith. It is neither a conflict of interest nor bad faith for an insurer to contest and press all defenses that the uninsured motorist could press.

SECTION 2. A new subsection to section 26.1-40-15.3 of the North Dakota Century Code is created and enacted as follows:

In any claim for underinsured motorist benefits, the insured and the insurer each bear responsibility for one's own attorney's fees incurred unless the insurance contract specifically provides otherwise or the insurance company is found to have acted in bad faith. It is neither a conflict of interest nor bad faith for an insurer to contest and press all defenses that the underinsured motorist could press.

SECTION 3. AMENDMENT. Section 26.1-41-20 of the North Dakota Century Code is amended and reenacted as follows:

26.1-41-20. (Effective through July 31, 2003) Secured person exemption for no liability insurance. In any action against a secured person to recover damages because of accidental bodily injury arising out of the ownership or operation of a secured motor vehicle in this state, the secured person may not be assessed damages for noneconomic loss for a serious injury in favor of a party who has at least ~~two convictions~~ one prior unrelated conviction under section 39-08-20 and who was operating a motor vehicle owned by that party at the time of injury without a valid policy of liability insurance in order to respond to damages for liability arising out of the ownership, maintenance, or use of that motor vehicle.

SECTION 4. AMENDMENT. Section 39-05-20.2 of the North Dakota Century Code is amended and reenacted as follows:

39-05-20.2. Issuance of salvage certificate of title. The owner of a vehicle that is damaged in excess of seventy-five percent of ~~its~~ the vehicle's retail value as determined by the national automobile dealers association official used car guide,

shall forward the title for that vehicle to the department within ten days and the department shall issue a salvage certificate of title. Glass damage and hail damage must be excluded in the determination of whether a vehicle has been damaged in excess of seventy-five percent of the vehicle's retail value.

If a vehicle for which a salvage certificate of title has been issued is reconstructed, a regular certificate of title may be obtained by completing an application for the certificate. The applicant shall include with the application a certificate of inspection in the form required by the department, the salvage certificate of title, and a five dollar fee. The department shall place on the regular certificate of title and on all subsequent certificates of title issued for the vehicle the words "previously salvaged" and a notation that damage disclosure information is available from the department. The department may not issue a new certificate unless the vehicle identification number of the vehicle has been inspected and found to conform to the description given in the application or unless other proof of the identity of the vehicle has been provided to the satisfaction of the department.

Approved April 21, 2003

Filed April 21, 2003

CHAPTER 259**SENATE BILL NO. 2238**

(Senators Heitkamp, Erbele, Lyson)
(Representatives Belter, DeKrey, Gulleson)

INSURANCE NOTICE FOLLOWING TOTAL LOSS

AN ACT to provide for automobile insurance notice requirements following total loss.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Notice requirements following total loss. If an insurer determines an automobile with physical damage coverage has incurred a total loss or constructive total loss and that insurer continues to write comprehensive or collision coverage on that automobile, the insurer shall provide notice to the insured that:

1. The insurer determined the automobile is a total loss;
2. The insured's current coverage on that automobile includes comprehensive or collision coverage;
3. If the insured does not repair the automobile, the insurer will reduce the amount of any future physical damage claim for that automobile by the amount paid for the total loss; and
4. If the insured does not repair that automobile, the insured should contact the agent to request that the comprehensive or collision coverage on that automobile be discontinued.

Approved March 21, 2003

Filed March 21, 2003

CHAPTER 260

SENATE BILL NO. 2275

(Senators Fischer, Heitkamp, J. Lee)
(Representatives Delmore, Hawken, Nottestad)

AUTOMOBILE INSURANCE BENEFITS COORDINATION

AN ACT to amend and reenact section 26.1-41-13 of the North Dakota Century Code, relating to coordination of benefits for automobile insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-41-13 of the North Dakota Century Code is amended and reenacted as follows:

26.1-41-13. Priority of applicable security - Coordination of benefits.

1. A basic no-fault insurer has the primary obligation to make payment for economic loss because of accidental bodily injury arising out of the operation of a motor vehicle; provided, that the amount of all benefits a claimant recovered or is entitled to recover for the same elements of loss under any workers' compensation law must be subtracted from the basic no-fault benefits otherwise payable for the injury.
2. As between applicable security basic no-fault benefits are payable as follows:
 - a. As to any person injured while occupying a secured motor vehicle, or injured as a pedestrian by a secured motor vehicle, the basic no-fault insurer of the secured motor vehicle shall pay the benefits.
 - b. As to any person who is injured while occupying an unsecured motor vehicle, or while being struck as a pedestrian by an unsecured motor vehicle, the basic no-fault insurer affording the benefits to the injured person shall pay the benefits.
 - c. As to any person injured while occupying a bus that is a secured motor vehicle, the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle shall pay the benefits; and, if there is no basic no-fault insurer affording benefits to the injured person, then the basic no-fault insurer of the bus shall pay the benefits.
 - d. As to any person injured while occupying a secured motor vehicle that is transporting persons under a ridesharing arrangement, as defined in section 8-02-07, the basic no-fault insurer affording benefits to the injured person as the owner of a secured motor vehicle or as a relative of the owner of a secured motor vehicle shall pay the benefits; and, if there is no basic no-fault insurer

affording benefits to the injured person, then the basic no-fault insurer of the secured motor vehicle shall pay the benefits.

3. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, authorized to do business in this state may coordinate any benefits it is obligated to pay for economic loss incurred as a result of accidental bodily injury, with the first ~~five~~ ten thousand dollars of basic no-fault benefits. A basic no-fault insurer authorized to do business in this state may coordinate any benefits it is obligated to pay for medical expenses incurred as a result of accidental bodily injury in excess of ~~five~~ ten thousand dollars. An insurer, health maintenance organization, or nonprofit health service corporation, other than a basic no-fault insurer, may not coordinate benefits unless it provides those persons who purchase benefits from it with an equitable reduction or savings in the direct or indirect cost of purchased benefits. The commissioner shall approve any coordination of benefits plan.

Approved April 11, 2003

Filed April 11, 2003

CHAPTER 261

SENATE BILL NO. 2123

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

SURPLUS LINES INSURANCE FILINGS

AN ACT to amend and reenact sections 26.1-44-02 and 26.1-44-08 of the North Dakota Century Code, relating to surplus lines insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 26.1-44-02 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-02. Affidavit as prerequisite of insurance - Contents. A surplus lines insurance producer licensed under chapter 26.1-26 shall in every case execute and file with the commissioner within ~~fifteen~~ sixty days of the effective date of any surplus line insurance policy, indemnity contract, or surety bond an affidavit in acceptable form that after a diligent search, an inability exists to procure the insurance, indemnity contract, or surety bond desired from an insurer authorized to do business in this state. There is a presumption that such inability exists and that a diligent search has been made if the insurance, indemnity contract, or surety bond provides coverage listed by the commissioner as an approved surplus lines coverage. If the commissioner concurs in the allegation in the affidavit, the commissioner may authorize the procuring of the insurance, indemnity contract, or bond from an insurer not authorized to do business in this state.

SECTION 2. AMENDMENT. Section 26.1-44-08 of the North Dakota Century Code is amended and reenacted as follows:

26.1-44-08. Civil penalty for failure to file statement and pay tax - Action for recovery - Revocation of license - Conditions prerequisite to reissuance - Hearing procedure and judicial review. Every such surplus lines insurance producer who fails or refuses to make and file the annual statement, and to pay the taxes required to be paid prior to the first day of May after such tax is due, is liable for a fine of twenty-five dollars for each day of delinquency. The tax and fine may be recovered in an action to be instituted by the commissioner in the name of the state, the attorney general representing the commissioner, in any court of competent jurisdiction, and the fine, when so collected, must be paid to the state treasurer and placed to the credit of the general fund. The commissioner, if satisfied that the delay in filing the annual statement and the payment of the tax was excusable, may waive all or any part of the fine. The commissioner ~~shall~~ may revoke or suspend the surplus lines insurance producer's license of the producer if any surplus lines insurance producer fails to make and file the annual statement and pay the taxes, or refuses to allow the commissioner to inspect and examine the producer's records of the business transacted by the producer pursuant to this chapter, or fails to keep the records in the manner required by the commissioner, or falsifies the affidavit referred to in section 26.1-44-02.

If the license of a surplus lines insurance producer is revoked, whether by the action of the commissioner or by judicial proceedings, another license may not be issued to that surplus lines insurance producer until two years have elapsed from the effective date of the revocation, nor until all taxes and fines are paid, nor until the commissioner is satisfied that full compliance with this chapter will be had.

Approved March 14, 2003

Filed March 17, 2003

CHAPTER 262

HOUSE BILL NO. 1061

(Industry, Business and Labor Committee)
(At the request of the Insurance Commissioner)

LONG-TERM CARE INSURANCE POLICY REQUIREMENTS

AN ACT to create and enact subsection 6 of section 26.1-45-01 and section 26.1-45-14 of the North Dakota Century Code, relating to long-term care insurance; and to amend and reenact subsections 3, 4, and 5 of section 26.1-45-01, section 26.1-45-05.1, subdivision b of subsection 2 of section 26.1-45-07, and sections 26.1-45-09 and 26.1-45-11 of the North Dakota Century Code, relating to long-term care insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3, 4, and 5 of section 26.1-45-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "Group long-term care insurance" means a long-term care insurance policy that is delivered or issued for delivery in this state to:
 - a. One or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or ~~both a combination thereof~~, or for members or former members or ~~both a combination thereof~~, of the labor organizations.
 - b. Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:
 - (1) Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and
 - (2) Has been maintained in good faith for purposes other than obtaining insurance.
 - c. An association, a trust, or the trustee of a fund established, created, or maintained for the benefit of members of one or more associations meeting the requirements of section 26.1-45-02.
 - d. A group other than a group described in subdivision a, b, or c if the commissioner finds that:
 - (1) The issuance of the group policy is not contrary to the best interest of the public;
 - (2) The issuance of the group policy would result in economies of acquisition or administration; and

- (3) The benefits are reasonable in relation to the premiums charged.
4. "Long-term care insurance" means any insurance policy or rider primarily advertised, marketed, offered, or designed to provide coverage for not less than ~~one year~~ twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital. The term includes group and individual annuities and life insurance policies or riders, whether issued by insurers, fraternal benefit societies, nonprofit health service corporations, prepaid health plans, health maintenance organizations, or any similar entity, which provide directly or which supplement long-term care insurance. The term also includes home health care type insurance policies or riders which provide directly or which supplement long-term care insurance; and include a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. The term includes qualified long-term care insurance contracts. The term includes long-term care insurance products issued by insurers; fraternal benefit societies; nonprofit health, hospital, and medical service corporations; prepaid health plans; health maintenance organizations; or a similar organization to the extent that the organization is otherwise authorized to issue life or health insurance. The term does not include any insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expenses coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage. With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Notwithstanding any other provision contained herein, any product advertised, marketed, or offered as a long-term care insurance is subject to the provisions of this chapter.
5. "Policy" means any policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society, nonprofit health, hospital, or medical service corporation, prepaid health plan, health maintenance organization, or any similar entity.

SECTION 2. Subsection 6 of section 26.1-45-01 of the North Dakota Century Code is created and enacted as follows:

6. a. "Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" means an individual or group insurance contract that meets the requirements of section 7702B(b) of the Internal Revenue Code of 1986, as amended, as follows:

- (1) The only insurance protection provided under the contract is coverage of qualified long-term care services. A contract satisfies the requirements of this paragraph even if payments are made on a per diem or other periodic basis without regard to the period in which the expenses are incurred;
 - (2) The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under title XVIII of the Social Security Act, as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this paragraph do not apply to expenses that are reimbursable under title XVIII of the Social Security Act only as a secondary payor. A contract satisfies the requirements of this paragraph even if payments are made on a per diem or other periodic basis without regard to the period in which the expenses are incurred;
 - (3) The contract is guaranteed renewable, within the meaning of section 7702B(b)(1)(c) of the Internal Revenue Code of 1986, as amended;
 - (4) The contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed except as provided in paragraph 5;
 - (5) All refunds of premiums and all policyholder dividends or similar amounts under the contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund on the event of death of the insured or a complete surrender or cancellation of the contract cannot exceed the aggregate premiums paid under the contract; and
 - (6) The contract meets the consumer protection provisions set forth in section 7702B(g) of the Internal Revenue Code of 1986, as amended.
- b. "Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" also means the portion of a life insurance contract that provides long-term care insurance coverage by rider or as part of the contract and that satisfies the requirements of sections 7702B(b) and (e) of the Internal Revenue Code of 1986, as amended.

SECTION 3. AMENDMENT. Section 26.1-45-05.1 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-05.1. Incontestability and rescission of long-term care insurance policy or certificate. ~~After six months from the effective date of the~~

1. If a policy or certificate has been in force for less than six months, an insurer may not contest or rescind a long-term care insurance policy or certificate or deny a an otherwise valid long-term care insurance claim

on the basis of representations made by an insured on the application for insurance except upon a showing by the insurer that the insured knowingly and intentionally misrepresented relevant facts on the application form of misrepresentation that is material to the acceptance for coverage.

2. If a policy or certificate has been in force for at least six months but less than two years, an insurer may not rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim except upon a showing of misrepresentation that is both material to the acceptance for coverage and that pertains to the condition for which benefits are sought.
3. If a policy or certificate has been in force for two years, the policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health. The policy or certificate may not be contested based upon misrepresentation alone.
4. A long-term care insurance policy or certificate may not be field issued based on medical or health status. For purposes of this section, "field issued" means a policy or certificate issued by an agent or a third-party administrator pursuant to the underwriting authority granted to the agent or third-party administrator by an insurer.
5. If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payments may not be recovered by the insurer in the event that the policy or certificate is rescinded.
6. In the event of the death of the insured, this section does not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care. In this situation, the remaining death benefits under these policies are governed by section 26.1-33-05. In all other situations, this section applies to life insurance policies that accelerate benefits for long-term care.

SECTION 4. AMENDMENT. Subdivision b of subsection 2 of section 26.1-45-07 of the North Dakota Century Code is amended and reenacted as follows:

- b. A long-term care insurance policy or rider which conditions eligibility of noninstitutional benefits on the prior receipt of institutional care may not require a prior institutional stay of more than ~~ten~~ thirty days.

SECTION 5. AMENDMENT. Section 26.1-45-09 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-09. Right to return policy - Outline of coverage required - Contents of certificate - Summary of policy provisions - Report of benefits status.

1. Long-term care insurance applicants have the right to return the policy or certificate within thirty days of the date of its delivery or within thirty days of its effective date, whichever occurs later, and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance

policies and certificates must have a notice prominently printed on the first page or attached thereto stating in substance that the applicant has the right to return the policy or certificate within thirty days of the date of its delivery or within thirty days of its effective date, whichever occurs later, and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group defined in subdivision a of subsection 3 of section 26.1-45-01, the applicant is not satisfied for any reason.

2. a. An outline of coverage must be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose.
 - (1) The commissioner shall prescribe a standard format including style, arrangement, overall appearance, and the content of an outline of coverage.
 - (2) In the case of insurance producer solicitations, an insurance producer must deliver the outline of coverage prior to the presentation of an application or enrollment form.
 - (3) In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form.
 - (4) In the case of a policy issued to a group defined in subdivision a of subsection 3 of section 26.1-45-01, an outline of coverage is not required to be delivered, provided that the information described in paragraphs 1 through 7 of subdivision b is contained in other materials relating to enrollment. Upon request, these other materials must be made available to the commissioner.
- b. The outline of coverage must include:
 - (1) A description of the principal benefits and coverage provided in the policy.
 - (2) A statement of the principal exclusions, reductions, and limitations contained in the policy.
 - (3) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage must be specifically described.
 - (4) A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains the governing contractual provisions.
 - (5) A description of the terms under which the policy or certificate may be returned and premium refunded.

- (6) A brief description of the relationship of cost of care and benefits.
 - (7) A statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified long-term care insurance contract under 7702B(b) of the Internal Revenue Code of 1986, as amended.
3. A certificate issued pursuant to a group long-term care insurance policy which policy is delivered or issued for delivery in this state must include:
 - a. A description of the principal benefits and coverage provided in the policy.
 - b. A statement of the principal exclusions, reductions, and limitations contained in the policy.
 - c. A statement that the group master policy determines governing contractual provisions.
4. If an application for a long-term care insurance contract or certificate is approved and issued, the issuer, directly or through an authorized representative, shall deliver the contract or certificate of insurance to the applicant no later than thirty days after the date of approval.
5. At the time of policy delivery, a policy summary must be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of request shall make such delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary must also include:
 - a. An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;
 - b. An illustration on the amount of benefits, the length of benefit, and the guaranteed lifetime benefits, if any, for each covered person;
 - c. Any exclusions, reductions, and limitations on benefits of long-term care; ~~and~~
 - d. A statement as to whether a long-term care inflation protection option is available under this policy;
 - e. If applicable to the policy type, the summary shall also include:
 - (1) A disclosure of the effects of exercising other rights under the policy;
 - (2) A disclosure of guarantees relating to long-term care costs of insurance charges; and
 - (3) Current and projected maximum lifetime benefits.

- f. The provisions of the policy summary listed above may be incorporated into a basic illustration or into a life insurance policy summary delivered to the consumer.
5. 6. Any time a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status a monthly report must be provided to the policyholder. Such report must include:
- a. Any long-term care benefits paid out during the month;
 - b. An explanation of any changes in the policy, e.g., death benefits or cash values, due to long-term care benefits being paid out; and
 - c. The amount of long-term care benefits existing or remaining.
7. If a claim under a long-term care insurance contract is denied, the issuer shall, within sixty days of the date of a written request by the policyholder or certificate holder, or a representative thereof:
- a. Provide a written explanation of the reasons for the denial; and
 - b. Make available all information directly related to the denial.

SECTION 6. AMENDMENT. Section 26.1-45-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-45-11. Rulemaking authority. The commissioner may adopt reasonable rules to promote premium adequacy, protect the policyholder in the event of substantial rate increases, and to establish minimum standards for correcting abusive marketing practices, replacement forms, insurance producer testing, penalties, and reporting practices for long-term care insurance.

SECTION 7. Section 26.1-45-14 of the North Dakota Century Code is created and enacted as follows:

26.1-45-14. Nonforfeiture benefits.

1. Except as provided in subsection 2, a long-term care insurance policy may not be delivered or issued for delivery in this state unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate, including a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy. In the event the policyholder or certificate holder declines the nonforfeiture benefits, the insurer shall provide a contingent benefit upon lapse that is available for a specific period of time following a substantial increase in premium rates.
2. When a group long-term care insurance policy is issued, the offer required in subsection 1 must be made to the group policyholder. However, if the policy is issued as group long-term care insurance as defined in subdivision d of subsection 3 of section 26.1-45-01, other than to a continuing care retirement community or other similar entity, the offering must be made to each proposed certificate holder.

3. The commissioner shall adopt rules specifying the type of nonforfeiture benefits to be offered as part of long-term care insurance policies and certificates, the standards for nonforfeiture benefits, and the rules regarding contingent benefit upon lapse, including a determining of the specific period of time during which a contingent benefit upon lapse will be available and the substantial premium rate increase that triggers a contingent benefit upon lapse as described in subsection 1.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 263

SENATE BILL NO. 2251

(Senators Espegard, Heitkamp, Krebsbach)
(Representatives Ekstrom, Ruby, Severson)

PROPERTY INSURANCE PLACEMENT FACILITY

AN ACT to create and enact a new chapter to title 26.1 of the North Dakota Century Code, relating to creation of a property insurance placement facility.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 26.1 of the North Dakota Century Code is created and enacted as follows:

Sunrise - Trigger. The commissioner may implement a property insurance placement facility for those residents who are unable to obtain necessary property insurance through the standard insurance market. The commissioner shall hold a public hearing upon notice of not less than twenty days to determine the reasonable availability of property insurance in the market. Upon a finding by the commissioner that there is a lack of availability of property insurance in the market, the commissioner shall by order authorize the implementation of a property insurance placement facility as set forth in this chapter.

Definitions. As used in this chapter:

1. "Basic property insurance" means insurance against direct loss to property as defined and limited in standard fire policies and extended coverage endorsements thereon.
2. "Homeowners insurance" means insurance on owner-occupied dwellings providing personal multi-peril property and liability coverage.
3. "Insurer" means an insurance company authorized to write and that is engaged in writing in North Dakota, on a direct basis, basic property and homeowners insurance or components thereof.
4. "North Dakota property insurance placement facility" or "facility" means the organization formed by insurers to assist applicants in securing basic property or homeowners insurance.

Board.

1. A board of directors consisting of seven members shall direct the operations of the property insurance placement facility. The seven members are comprised of five directors from the insurance industry and two public directors as follows:
 - a. Two of the five industry representatives must come from domestic insurance companies, one must come from county mutual insurance companies, one from foreign stock companies, and one from foreign mutual companies. The commissioner shall appoint

- the first board on a staggered basis. Subsequent board members are to be elected by facility members.
- b. The public directors must be appointed by the commissioner. Public directors may include licensed insurance agents.
 - c. The term of each director is three years beginning on January first of the year the director is elected or appointed, except as staggered in the initial appointment process. A vacancy must be filled by election by the other directors for the remainder of the term. A vacancy to a public directorship must be filled by appointment by the commissioner for the remainder of the term. If the board fails to elect a replacement for an industry vacancy within thirty days, the commissioner shall appoint a replacement for the remainder of the term.
2. The board shall prepare and maintain a plan of operation which provides for the management of the facility, including the hiring of employees or contracting services to carry out the plan of operation, establishment of necessary facilities within the state, assessment of members to defray losses and expenses, negotiating commission agreements, establishing reasonable underwriting standards, developing reasonable cancellation and nonrenewal standards, acceptance and cession of reinsurance, adopting procedures for determining amounts of insurance to be provided, procedures for payment of claims, procedures for appealing adverse actions, procedures for reporting the plan experience to a statistical agent, and procedures for contracting facility functions to the private sector. The board has ninety days to submit the initial plan of operation to the commissioner for approval. All subsequent amendments to the plan of operation must be submitted to the commissioner for approval. The commissioner may require the board to waive the assessment requirement for an insurer if the assessment would cause a significant financial impairment to the insurer or would jeopardize the solvency of the insurer.

Facility membership. Each insurer authorized to write and who is engaged in writing within this state, on a direct basis, basic property insurance or any component thereof in multi-peril policies or homeowners insurance shall participate in the facility as a condition of its authority to do the business of insurance in this state. Members of the facility are responsible for the cost of funding the operations, expenses, and losses of the facility. Each year the board shall assess the members based upon each member's pro rata share of the aggregate property insurance premium written in the second preceding calendar year as disclosed in the annual statement and other reports filed by members with the commissioner. The assessment must be based on the premiums reported from income from this state in the following lines of the annual statement: fire, allied lines, and homeowners multiple peril.

Coverage and forms. The plan must use standard policy forms to provide coverage for basic property and homeowners insurance. The plan may not provide coverage for automobile or commercial risks.

Rates. The facility shall establish rates and may include data from an advisory or statistical organization in the development of its rates. Rates must be submitted to the commissioner for approval prior to use. Rates must be actuarially

sound under chapter 26.1-25 and may not actively compete with rates in the voluntary market.

Underwriting. A person who has been refused coverage, in writing, by at least five standard carriers based on an underwriting, claims, or credit history is eligible to apply to the facility for coverage.

Agents. A licensed property and casualty agent may submit an application on behalf of an applicant to the facility. The agent is entitled to receive a commission for the service. The agent is not a representative of the facility.

Immunity. The facility, its members, employees, contractors, agents, and the commissioner are not liable for, nor may a cause of action be brought against them, for statements made in good faith in the course of conducting facility operations and procedures.

Examinations and audits. The commissioner shall examine the facility every three years. The facility shall submit a financial report and an annual report to the commissioner by April first of each year. The report must include premiums written, losses incurred, loss adjusting expenses incurred, underwriting expenses, claims losses, and assessments.

Approved April 9, 2003
Filed April 9, 2003

JUDICIAL BRANCH OF GOVERNMENT

CHAPTER 264

HOUSE BILL NO. 1419

(Representatives Kretschmar, Klemin, Maragos)
(Senators Traynor, Trenbeath)

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, ~~2004~~ 2008) 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, ~~2004~~ 2008) 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 and 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, 2004 2008) 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, 2004 2008) 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, ~~2004~~ 2008) 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, ~~2004~~ 2008) 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, ~~2004~~ 2008) Right to appeal not created. This chapter does not provide or create a right of appeal where 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, ~~2004~~ 2008) 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, ~~2004~~ 2008) 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 13, 2003
Filed March 13, 2003

CHAPTER 265**HOUSE BILL NO. 1390**

(Representative DeKrey)

COURT ELECTRONIC FILING FEES

AN ACT to amend and reenact section 27-03-05 of the North Dakota Century Code, relating to fees collected by the clerk of the supreme court; and to provide a continuing appropriation.

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 ~~such the~~ court of a petition in any cause seeking the exercise of the original court's jurisdiction ~~thereof~~. 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 13, 2003

Filed March 13, 2003

CHAPTER 266

HOUSE BILL NO. 1088

(Judiciary Committee)

(At the request of the Supreme Court)

COURT FACILITIES IMPROVEMENT FUND AND COMMITTEE

AN ACT to create and enact three new sections to chapter 27-05.2 of the North Dakota Century Code, relating to establishment of a court facilities improvement and maintenance fund and court facilities improvement advisory committee; to amend and reenact sections 12-48-15, 12-48.1-03, 29-26-22, 39-08-20, and 51-04-03.1 of the North Dakota Century Code, relating to court administration fees; and to provide a continuing appropriation.

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 - Warden to keep account of money earned by inmates - Investment in interest-bearing accounts.

1. The warden of the penitentiary shall keep an account for each inmate. 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 ~~court costs~~ any administration fee, 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 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 to the director of the department of corrections and rehabilitation. 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 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 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, released on parole, or discharged from the penitentiary.

SECTION 2. AMENDMENT. Section 12-48.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-03. Use of funds earned on work release. The plan for the inmate shall provide that any funds earned in outside employment will be used in the following order: for necessary expenses of the inmate, including room and board costs of the institution; ~~court costs or~~ any administration fee and fine; restitution if a part of the sentence; necessary support of dependents; and credited to inmate's personal account to be paid the inmate on release.

SECTION 3. A new section to chapter 27-05.2 of the North Dakota Century Code is created and enacted as follows:

Court facilities improvement and maintenance fund - Administration - Continuing appropriation. The court facilities improvement and maintenance fund is a special fund in the state treasury. The state treasurer shall deposit in the fund certain fees collected under section 29-26-22. All moneys in the fund are appropriated on a continuing basis to be used as provided in this chapter.

SECTION 4. A new section to chapter 27-05.2 of the North Dakota Century Code is created and enacted as follows:

Court facilities improvement advisory committee - Members.

1. The court facilities improvement advisory committee consists of:

- a. One member appointed by the North Dakota association of counties to represent counties with a population fewer than seven thousand five hundred.
 - b. One member appointed by the North Dakota association of counties to represent counties with a population of seven thousand five hundred or more.
 - c. One member, who shall serve as chairman of the committee, appointed by the chief justice of the supreme court.
 - d. One member appointed by the state bar association of North Dakota.
 - e. One member appointed by the chairman of the legislative council.
2. The term of each member is three years. Initially, as determined by lot, one member shall serve for one year, two members shall serve for two years, and two members shall serve for three years. At the end of the member's term, the appointing authority shall appoint a successor for a full three-year term. A member may not serve more than two 3-year terms. A vacancy must be filled by the appointing authority for the remainder of the term.
 3. At the initial meeting of the committee, the committee shall adopt rules of operation and procedure for the committee. The committee shall submit the rules to the supreme court for approval. The rules of operation must provide that a quorum of the committee consists of at least four members.
 4. The members of the committee are entitled to reimbursement for travel and expenses as provided by law for other state officers. Travel and expense costs must be paid from funds from the court facilities improvement and maintenance fund.
 5. The supreme court shall provide staff services for the committee.

SECTION 5. A new section to chapter 27-05.2 of the North Dakota Century Code is created and enacted as follows:

Application for grants from court facilities improvement and maintenance fund. Moneys in the court facilities improvement and maintenance fund may be used by the court facilities improvement advisory committee to make grants to counties to provide funds for court facilities improvement and maintenance projects. The committee shall review applications to determine if the purpose of a grant is consistent with the purposes of the fund and if the proposed project is a necessary improvement to court facilities or essential to remodel or maintain existing court facilities in the applicant county. A grant may be awarded to a county only if the applicant county agrees to provide local funding for the project in an amount at least equal to twenty-five percent of the total cost of the project. The committee shall ensure that at least twenty-five percent of funds granted during a biennium are allocated to counties with a population fewer than seven thousand five hundred. Grants disbursed under this section may be used only to improve or provide essential remodeling or maintenance to facilities used for chambers, courts, and court-related services.

SECTION 6. AMENDMENT. Section 29-26-22 of the North Dakota Century Code is amended and reenacted as follows:

29-26-22. Judgment for fines, ~~costs~~, and court administration fee - ~~Statement to be filed by court~~ Special fund - Docketing and enforcement. In all criminal cases except infractions, upon a plea or finding of guilt, a 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 up to thirty percent of the maximum allowable fine for the offense may be taxed against the defendant in lieu of the assessment of court costs 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. If the court does assess costs as part of its sentence, the court shall include in the judgment the facts justifying the amount assessed. 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. A court may waive the administration fee upon a showing of indigency as provided in section 25-03.1-13. District court ~~costs~~, 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, ~~costs~~, or court administration fee, or ~~any combination thereof both~~, may be docketed, and ~~thereafter 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 ~~costs or administrative~~ administration fee in installments. When a defendant is assessed ~~costs or administrative~~ administration fees, the court may not impose at the same time an alternative sentence to be served if the ~~costs~~ fees are not paid.

¹²⁶ **SECTION 7. 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. 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

¹²⁶ Section 39-08-20 was also amended by section 1 of House Bill No. 1238, chapter 324.

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 a valid policy of liability insurance in effect at the time of violation of this section to the officer, officer's agency, or a court, that person may not be convicted or assessed any ~~court costs~~ administration fee for violation of this section. 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 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.

2. Upon conviction for a violation of this section 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. A person who has been convicted for violation of this section 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. 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.

SECTION 8. AMENDMENT. Section 51-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

51-04-03.1. License to be carried by licensee and exhibited on demand.

Every transient merchant licensed under this chapter shall have the license in immediate possession at all times when engaging in or transacting any business regulated by this chapter. The licensee shall display the license when requested to do so by any court, law enforcement official, peace officer, or consumer. However, a person charged with violating this requirement may not be convicted, fined, or assessed ~~court costs~~ the administration fee if the license is produced in court or to the arresting officer and if the license was valid at the time of the arrest.

Approved April 16, 2003
Filed April 17, 2003

CHAPTER 267

HOUSE BILL NO. 1090

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

JUVENILE RECORDS

AN ACT to amend and reenact subsection 1 of section 27-20-51 and section 27-20-52 of the North Dakota Century Code, relating to juvenile records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 27-20-51 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in this section, all files and records of the juvenile court, whether in the office of the clerk of district court or juvenile court, of a proceeding under this chapter are closed to the public. Juvenile court files and records are open to inspection only by:
 - a. The judge and staff of the juvenile court.
 - b. The parties to the proceeding or their counsel or the guardian ad litem of any party.
 - c. A public or private agency or institution providing supervision or having custody of the child under order of the juvenile court, which must be given a copy of the findings and order of disposition when it receives custody of the child.
 - d. Any court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who, prior to the criminal case, had been a party to the proceeding in juvenile court.
 - e. The professional staff of the uniform crime victims compensation program when necessary for the discharge of their duties pursuant to chapter 54-23.4.
 - f. A staff member of the division of children and family services of the department of human services or a law enforcement officer when necessary for the performance of that person's duties under section 50-11.1-06.2 or the National Child Protection Act of 1993 [Pub. L. 103-209; 107 Stat. 2490; 42 U.S.C. 5119 et seq.].
 - g. An employee or agent of the department of human services when necessary for performance of that individual's duty under chapter 50-11 or 50-11.1 to investigate the background of an individual living or working in the facility, home, or residence for which licensure is sought.

- h. A criminal justice agency if the juvenile is required to register under section 12.1-32-15.

SECTION 2. AMENDMENT. Section 27-20-52 of the North Dakota Century Code is amended and reenacted as follows:

27-20-52. Law enforcement and correctional facility records. Law enforcement and correctional facility records and files of a child alleged or found to be delinquent, unruly, or deprived must be kept separate from the records and files of arrests of adults. Unless a charge of delinquency is transferred for criminal prosecution under section 27-20-34, the interest of national security requires, or the court otherwise orders in the interest of the child, these records and files may not be open to public inspection; but inspection of these records and files is permitted by:

1. A juvenile court having the child before it in any proceeding;
2. Counsel for a party to the proceeding;
3. The officers of public institutions or agencies to whom the child is or may be committed;
4. Law enforcement officers of other jurisdictions when necessary for the discharge of their official duties;
5. A court in which the child is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of ~~penal institutions and other penal~~ correctional facilities to which the child is detained or committed, or by the parole board, the governor, or the pardon advisory board, if one has been appointed, in considering the child's parole or discharge or in exercising supervision over the child;
6. The professional staff of the uniform crime victims compensation program when necessary for the discharge of their duties pursuant to chapter 54-23.4; and
7. A superintendent or principal of the school in which the child is currently enrolled or of a school in which the child wishes to enroll.

Notwithstanding that law enforcement records and files of a child alleged or found to be delinquent, unruly, or deprived are not open to public inspection, nothing in this section may be construed to limit the release of general information not identifying the identity of the child.

Approved March 25, 2003
Filed March 25, 2003

JUDICIAL PROCEDURE, CIVIL

CHAPTER 268

HOUSE BILL NO. 1071

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

AN ACT to provide for the adoption of the Uniform Foreign Money-Judgments Recognition Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.
2. "Foreign state" means any governmental unit other than the the United States or any state, district, commonwealth, territory, or insular possession of the United States.

SECTION 2. Applicability. This Act applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal is pending or the judgment is subject to appeal.

SECTION 3. Recognition and enforcement. Except as provided in section 4 of this Act, a foreign judgment meeting the requirements of section 2 of this Act is conclusive between the parties to the extent that the judgment grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit.

SECTION 4. Grounds for nonrecognition.

1. A foreign judgment is not conclusive if:
 - a. The judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
 - b. The foreign court did not have personal jurisdiction over the defendant; or
 - c. The foreign court did not have jurisdiction over the subject matter.
2. A foreign judgment need not be recognized if:

- a. The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable the defendant to defend;
- b. The judgment was obtained by fraud.
- c. The claim for relief on which the judgment is based is repugnant to the public policy of this state;
- d. The judgment conflicts with another final and conclusive judgment;
- e. The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or
- f. In the case of jurisdiction based only on personal service the foreign court was a seriously inconvenient forum for the trial of this action.

SECTION 5. Personal jurisdiction.

1. The foreign judgment may not be refused recognition for lack of personal jurisdiction if:
 - a. The defendant was served personally in the foreign state;
 - b. The defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over the defendant;
 - c. Before commencement of the proceedings, the defendant had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;
 - d. The defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign state;
 - e. The defendant had a business office in the foreign state and the proceedings in the foreign court involved a claim for relief arising out of business done by the defendant through that office in the foreign state; or
 - f. The defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a claim for relief arising out of the operation.
2. The courts of this state may recognize other bases of jurisdiction.

SECTION 6. Stay in case of appeal. If the defendant satisfies the court either that an appeal is pending or that the defendant is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 269**HOUSE BILL NO. 1214**

(Representatives Gulleson, Amerman, DeKrey, Kroeber, Warnke)
(Senator Nelson)

MOTOR VEHICLE EXEMPTION FOR DISABLED

AN ACT to amend and reenact subsection 2 of section 28-22-03.1 of the North Dakota Century Code, relating to motor vehicles as property exempt from process.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 28-22-03.1 of the North Dakota Century Code is amended and reenacted as follows:

2. A motor vehicle exemption not to exceed one thousand two hundred dollars, or a motor vehicle exemption not to exceed thirty-two thousand dollars for a motor vehicle that has been modified at a cost of not less than one thousand five hundred dollars to accommodate an individual with a permanent physical disability who is the owner of that motor vehicle.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 270**HOUSE BILL NO. 1330**

(Representatives DeKrey, Nicholas, Schmidt)

CONFISCATORY PRICE DEFENSE REPEAL

AN ACT to repeal sections 28-29-04, 28-29-05, and 28-29-06 of the North Dakota Century Code, relating to powers of courts when agricultural prices are confiscatory.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 28-29-04, 28-29-05, and 28-29-06 of the North Dakota Century Code are repealed.

Approved April 7, 2003

Filed April 7, 2003

CHAPTER 271

HOUSE BILL NO. 1212

(Representatives Dosch, Ekstrom, Keiser, Price)
(Senators Espegard, Mutch)

ADMINISTRATIVE RULE IMPACT ON SMALL ENTITIES

AN ACT to create and enact a new section to chapter 28-32 of the North Dakota Century Code, relating to requirement of consideration of the effect of proposed administrative rules on small businesses, organizations, and political subdivisions; to provide for a legislative council study; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 28-32 of the North Dakota Century Code is created and enacted as follows:

Rules affecting small entities - Analysis - Economic impact statements - Judicial review.

1. As used in this section:
 - a. "Small business" means a business entity, including its affiliates, which:
 - (1) Is independently owned and operated; and
 - (2) Employs fewer than twenty-five full-time employees or has gross annual sales of less than two million five hundred thousand dollars;
 - b. "Small entity" includes small business, small organization, and small political subdivision.
 - c. "Small organization" means any not-for-profit enterprise that is independently owned and operated and is not dominant in its field; and
 - d. "Small political subdivision" means a political subdivision with a population of less than five thousand.
2. Before adoption of any proposed rule, the adopting agency shall prepare a regulatory analysis in which, consistent with public health, safety, and welfare, the agency considers utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small entities. The agency shall consider each of the following methods of reducing impact of the proposed rule on small entities:

- a. Establishment of less stringent compliance or reporting requirements for small entities;
 - b. Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small entities;
 - c. Consolidation or simplification of compliance or reporting requirements for small entities;
 - d. Establishment of performance standards for small entities to replace design or operational standards required in the proposed rule; and
 - e. Exemption of small entities from all or any part of the requirements contained in the proposed rule.
3. Before adoption of any proposed rule that may have an adverse impact on small entities, the adopting agency shall prepare an economic impact statement that includes consideration of:
- a. The small entities subject to the proposed rule;
 - b. The administrative and other costs required for compliance with the proposed rule;
 - c. The probable cost and benefit to private persons and consumers who are affected by the proposed rule;
 - d. The probable effect of the proposed rule on state revenues; and
 - e. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.
4. For any rule subject to this section, a small entity that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of this section. A small entity seeking judicial review under this section must file a petition for judicial review within one year from the date of final agency action.
5. This section does not apply to any agency that is an occupational or professional licensing authority, nor does this section apply to the following agencies:
- a. Council on the arts.
 - b. Beef commission.
 - c. Dairy promotion commission.
 - d. Dry bean council.
 - e. Highway patrolmen's retirement board.
 - f. Indian affairs commission.
 - g. Board for Indian scholarships.

- h. State personnel board.
 - i. Potato council.
 - j. Board of public school education.
 - k. Real estate trust account committee.
 - l. Seed commission.
 - m. Soil conservation committee.
 - n. Oilseed council.
 - o. Wheat commission.
 - p. State seed arbitration board.
6. This section does not apply to rules mandated by federal law.
7. The adopting agency shall provide the administrative rules committee copies of any regulatory analysis or economic impact statement, or both, prepared under this section when the committee is considering the associated rules.

SECTION 2. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2003-04 interim, the effects and operation of requiring agency consideration of the effect of proposed administrative rules on small businesses, organizations, and political subdivisions. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 3. EFFECTIVE DATE. This Act is effective for administrative rules adopted after July 31, 2003.

Approved April 16, 2003
Filed April 16, 2003

CHAPTER 272

HOUSE BILL NO. 1178

(Representative Koppelman)

ADMINISTRATIVE RULEMAKING NOTICES

AN ACT to amend and reenact subsection 1 of section 28-32-10 of the North Dakota Century Code, relating to the contents of a notice of administrative rulemaking; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 28-32-10 of the North Dakota Century Code is amended and reenacted as follows:

1. An agency shall prepare a full notice and an abbreviated notice of rulemaking.
 - a. The agency's full notice of the proposed adoption, amendment, or repeal of a rule must include a short, specific explanation of the proposed rule and the purpose of the proposed rule, a determination of whether the proposed rulemaking is expected to have an impact on the regulated community in excess of fifty thousand dollars, identify at least one location where interested persons may review the text of the proposed rule, provide the address to which written ~~data, views, or arguments~~ comments concerning the proposed rule may be sent, provide the deadline for submission of written comments, provide a telephone number at which a copy of the rules and regulatory analysis may be requested, and, in the case of a substantive rule, provide the time and place set for each oral hearing. The agency's full notice must be filed with the office of the legislative council, and the agency shall request publication of an abbreviated newspaper publication notice at least once in each official county newspaper published in this state. The notice filed with the office of the legislative council must be accompanied by a copy of the proposed rules.
 - b. The abbreviated newspaper publication of notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of from three inches [7.62 centimeters] to four inches [10.16 centimeters] with a headline describing the general topic of the proposed rules. The notice must also include the ~~address and~~ address to use to obtain a copy of the proposed rules ~~or, the~~ address to use and the deadline to submit written comments, and the location, date, and time of the public hearing on the rules.

SECTION 2. EFFECTIVE DATE. This Act is effective for rulemaking notices filed with the legislative council after July 31, 2003.

Approved March 19, 2003
Filed March 19, 2003

JUDICIAL PROCEDURE, CRIMINAL

CHAPTER 273

SENATE BILL NO. 2328

(Senator Dever)
(Representative Delmore)

COMPROMISE OF MISDEMEANORS AND INFRACTIONS

AN ACT to amend and reenact sections 29-01-16 and 29-01-19 of the North Dakota Century Code, relating to when misdemeanors or infractions may be compromised.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 29-01-16 of the North Dakota Century Code is amended and reenacted as follows:

29-01-16. When misdemeanor or infraction may be compromised. When a defendant is held to answer on a charge constituting a misdemeanor or infraction, for which a person injured by the act constituting the offense has a remedy by a civil action, the offense may be compromised as provided in section 29-01-17, except ~~when it was committed:~~

1. ~~By~~ If the offense was committed by or upon a judge of any court in this state, or in any city in this state, or a peace officer, while in the execution of the duties of his office; ~~or~~
2. ~~With~~ If the offense was committed with an intent to commit a felony; or
3. If the offense involves a crime of domestic violence as defined in section 14-07.1-01 or is a violation of section 12.1-20-05, 12.1-20-07, 12.1-20-12.1, or 12.1-20-12.2.

SECTION 2. AMENDMENT. Section 29-01-19 of the North Dakota Century Code is amended and reenacted as follows:

29-01-19. Compromise limited. ~~No~~ A public offense ~~can~~ may not be compromised, nor ~~can~~ may any proceeding for the prosecution or punishment thereof, upon a compromise, be stayed except as is provided in sections 29-01-16 and 29-01-17 and with the consent of the state.

Approved March 27, 2003
Filed March 28, 2003

UNIFORM PROBATE CODE

CHAPTER 274

SENATE BILL NO. 2062

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT REVISIONS

AN ACT to amend and reenact sections 30.1-10.1-01, 30.1-10.1-02, 30.1-10.1-03, 30.1-10.1-04, 30.1-10.1-05, 30.1-10.1-06, 30.1-10.1-07, 30.1-10.1-08, 30.1-10.1-09, 30.1-10.1-10, and 30.1-10.1-12 of the North Dakota Century Code, relating to technical corrections in and under signatures under the Uniform Disclaimer of Property Interests Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

30.1-10.1-01. Definitions. In this chapter:

1. "Beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of an insurance or annuity policy; an account with a designation for payment on death; a security registered in beneficiary form; a pension, profit-sharing, retirement, or other employment-related benefit plan; or any other nonprobate transfer at death.
2. "Disclaimant" means the person to whom the disclaimed interest or power would have passed had the disclaimer not been made.
3. "Disclaimed interest" means the interest or share to which the disclaimant would have been entitled had the disclaimer not been made.
4. "Disclaimer" means a refusal to accept an interest in, or power over, property.
5. "Distribution ~~date~~ time" means the time when the disclaimed interest would have taken effect in possession or enjoyment.
6. "Fiduciary" means a personal representative, trustee, an agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.
7. "Future interest" means an interest that takes effect in possession or enjoyment, if at all, after the time of its creation.

8. "Jointly held property" means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.
9. "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.
10. "Signed" means, with present intent to authenticate or adopt a record, to execute or adopt a tangible symbol, or attach to or logically associate with the record an electronic sound, symbol, or process.
11. "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. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.
44. ~~12.~~ 12. "Trust" means an express trust, charitable or noncharitable, with additions, whenever and however created; ~~or and means~~ a trust created pursuant to a statute, judgment, or decree under which requires the trust is to be administered in the manner of an express trust.

SECTION 2. AMENDMENT. Section 30.1-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

30.1-10.1-02. General provisions.

1. A person may disclaim, in whole or in part, any interest in or power over property, including a power of appointment. A person may disclaim ~~notwithstanding the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or any a restriction or limitation on the right to disclaim imposed by the creator of the interest or power.~~
2. Except to the extent the fiduciary's power to disclaim is expressly limited by another statute of this state or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim ~~notwithstanding the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer imposed by the creator of the interest or power,~~ or a restriction or limitation on the right to disclaim imposed by, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.
3. A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or as any other interest or estate in the property.
4. A disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in section 30.1-10.1-09.

5. A disclaimer becomes irrevocable upon the later to occur of its delivery or filing as provided in section 30.1-10.1-09, or when it becomes effective as provided in sections 30.1-10.1-03 through 30.1-10.1-08.
6. A disclaimer made under this chapter is not a transfer, assignment, or release.

SECTION 3. AMENDMENT. Section 30.1-10.1-03 of the North Dakota Century Code is amended and reenacted as follows:

30.1-10.1-03. Disclaimer of interest in property.

1. Except for disclaimers governed by sections 30.1-10.1-04 and 30.1-10.1-05, subsections 2 through 6 apply to a disclaimer of an interest in property.
2. The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the intestate's death.
3. The disclaimed interest passes according to a provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.
4. If the instrument does not contain a provision described in subsection 3 and if the disclaimant is an individual and subsection 3 does not apply, the disclaimed interest passes as if the disclaimant had died immediately before the distribution date time. However, the disclaimed interest passes only to the descendants of the disclaimant who survive the distribution date if by law or according to a provision in under the instrument the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant predeceased the died before the distribution date time, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.
- ~~5.~~ If the disclaimant is a ~~person other than~~ not an individual ~~and subsection 3 does not apply~~, the disclaimed interest passes as if the disclaimant did not exist.
- ~~6.~~ 5. Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the distribution ~~date~~ time, but a future interest held by the disclaimant does not accelerate in possession or enjoyment.

SECTION 4. AMENDMENT. Section 30.1-10.1-04 of the North Dakota Century Code is amended and reenacted as follows:

30.1-10.1-04. Disclaimer of rights of survivorship in jointly held property.

1. Upon the death of a holder of jointly held property, a surviving holder may disclaim in whole or in part the greater of a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death

the disclaimer relates; or all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

2. The disclaimer under subsection 1 takes effect as of the death of the holder to whose death the disclaimer relates.
3. An interest disclaimed by a surviving holder of jointly held property passes as if the person whose interest is being disclaimed predeceased the holder to whose death the disclaimer relates.

SECTION 5. AMENDMENT. Section 30.1-10.1-05 of the North Dakota Century Code is amended and reenacted as follows:

30.1-10.1-05. Disclaimer of interest by trustee. If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become ~~part of the~~ trust property.

SECTION 6. AMENDMENT. Section 30.1-10.1-06 of the North Dakota Century Code is amended and reenacted as follows:

30.1-10.1-06. Disclaimer of powers of appointment and other powers not held in fiduciary capacity.

1. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity and if the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.
2. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity and if the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the date of the last exercise of the power; ~~or is a subsequent disclaimer of a presently exercisable general power of appointment, the disclaimer is without effect.~~
3. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the instrument creating the power is construed as if the power ceased to exist when the disclaimer became effective.

SECTION 7. AMENDMENT. Section 30.1-10.1-07 of the North Dakota Century Code is amended and reenacted as follows:

30.1-10.1-07. Disclaimer by appointee, object, or taker in default of exercise of power of appointment.

1. The disclaimer by ~~the~~ an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.
2. A disclaimer by the object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

3. Disposition of an interest in property disclaimed by an appointee is governed by subsection 3, 4, or 5 of section 30.1-10.1-03. A disclaimer of a power created in an appointee is governed by section 30.1-10.1-06.
4. Disposition of an interest in property disclaimed by an object or a taker in default of exercise of a power of appointment is governed by subsection 3 or 4 of section 30.1-10.1-03.

SECTION 8. AMENDMENT. Section 30.1-10.1-08 of the North Dakota Century Code is amended and reenacted as follows:

30.1-10.1-08. Disclaimer of powers held in fiduciary capacity.

1. If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.
2. If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.
3. A disclaimer under this section is effective as to other fiduciaries if ~~expressly so provided in the disclaimer~~ so provides and the fiduciary ~~or fiduciaries disclaiming have~~ has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

SECTION 9. AMENDMENT. Section 30.1-10.1-09 of the North Dakota Century Code is amended and reenacted as follows:

30.1-10.1-09. Delivery.

1. In subsections 2 through 11, delivery of a disclaimer may be ~~accomplished~~ effected by personal delivery, ~~mailing by~~ first-class mail, or any other method likely to result in its receipt.
2. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust, ~~delivery is made by delivering the~~ a disclaimer must be delivered to the personal representative of the decedent's estate, or if ~~no~~ a personal representative is not then serving, ~~by filing it~~ it must be filed with the court having jurisdiction to appoint the personal representative.
3. In the case of an interest in a testamentary trust, ~~delivery is made by delivering the~~ a disclaimer must be delivered to the trustee then serving, or if ~~no~~ a trustee is not then serving, to the personal representative of the decedent's estate, or if ~~no~~ a personal representative is not then serving, ~~by filing the disclaimer~~ it must be filed with a court having jurisdiction to ~~appoint~~ enforce the ~~trustee~~ trust.
4. In the case of an interest in an inter vivos trust, ~~delivery is made by delivering the~~ a disclaimer must be delivered to the trustee then serving, or if ~~no~~ a trustee is not then serving, ~~by filing~~ it must be filed with a court having jurisdiction to ~~appoint~~ enforce the ~~trustee~~ trust, or if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, ~~by delivering~~ it must be delivered to the settlor of a revocable trust or the transferor of the interest.

5. In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, ~~delivery is made by delivering~~ the disclaimer must be delivered to the person making the beneficiary designation.
6. In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, ~~delivery is made by delivering the a~~ disclaimer must be delivered to the person obligated to distribute the interest.
7. In the case of a disclaimer by a surviving holder of jointly held property, ~~delivery is made by delivering it~~ the disclaimer must be delivered to the person to whom the disclaimed interest passes.
8. In the case of a disclaimer by an object or taker in default of exercise of a power of appointment, ~~delivery is made by delivering it~~ the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power, or if ~~no a~~ a fiduciary is not then serving, ~~by filing it~~ must be filed with the court having authority to appoint the fiduciary. ~~Delivery of the disclaimer may be made at any time after the power was created.~~
9. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment, ~~delivery is made by delivering it~~ to the holder, personal representative of the holder's estate or to the fiduciary under the instrument that created the power, or if ~~no a~~ a fiduciary is not then serving, ~~by filing it~~ must be filed with the court having authority to appoint the fiduciary.
10. In the case of a disclaimer by a fiduciary of a power over a trust or estate, ~~delivery is made by delivering the disclaimer~~ must be delivered as provided in subsection 2, 3, or 4, ~~these subsections to be applied~~ as if the power disclaimed were an interest in property.
11. In the case of a disclaimer of a power by an agent, ~~delivery is made by delivering~~ the disclaimer must be delivered to the principal or the principal's representative.

SECTION 10. AMENDMENT. Section 30.1-10.1-10 of the North Dakota Century Code is amended and reenacted as follows:

30.1-10.1-10. When disclaimer barred or limited.

1. A disclaimer ~~of an interest in or power over property~~ is barred by a written waiver of the right to disclaim.
2. A disclaimer of an interest in property is barred if before the disclaimer becomes effective the disclaimant accepts the interest sought to be disclaimed; the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or makes a contract to do so; or, a judicial sale of the interest sought to be disclaimed occurs ~~before the disclaimer is delivered or filed~~.
3. A disclaimer, ~~whether partial in whole or complete part~~, of the future exercise of a power held in a fiduciary capacity is not barred by its ~~past~~ previous exercise.

4. A disclaimer, ~~whether partial in whole or complete part~~, of the future exercise of a power not held in a fiduciary capacity is not barred by its past exercise unless the power is exercisable in favor of the disclaimant.
5. A disclaimer is barred or limited if so provided by law other than this chapter.
6. A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this chapter had the disclaimer not been barred.
7. A Notwithstanding any other provision of this chapter, if as a result of a disclaimer is not barred by this section if it meets the requirements of a qualified disclaimer under section 2518 of the Internal Revenue Code [26 U.S.C. 2518], nor does the failure of a disclaimer to qualify under that section operate as a bar under this section or transfer the disclaimed or transferred interest is treated pursuant to the provisions of title 26 of the United States Code or regulations promulgated under that title, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this chapter.

SECTION 11. AMENDMENT. Section 30.1-10.1-12 of the North Dakota Century Code is amended and reenacted as follows:

30.1-10.1-12. Applicability.

1. This chapter does not limit the right of a person to waive, release, disclaim, or renounce property or an interest in or power over property under any law other than this chapter.
2. This chapter applies to ~~all interests~~ any interest in and powers or power over property, whenever created.
3. Except as otherwise provided in section 30.1-10.1-10, an interest in or power over property existing on August 1, 2001, as to which the time for delivering or filing a disclaimer under law superseded by this chapter has not expired may be disclaimed after August 1, 2001.
4. 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 electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. Section 7003(b)].

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 275**SENATE BILL NO. 2093**

(Judiciary Committee)

(At the request of the State Treasurer and the Board of University and School Lands)

UNCLAIMED ASSETS DISPOSITION

AN ACT to amend and reenact section 30.1-20-14 of the North Dakota Century Code, relating to the disposition of unclaimed assets in probate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 30.1-20-14 of the North Dakota Century Code is amended and reenacted as follows:

30.1-20-14. (3-914) Disposition of unclaimed assets.

4. If an heir, devisee, or claimant cannot be found, the personal representative shall distribute the missing person's share of the missing person to the missing person's conservator, if any, otherwise to the state treasurer to become a part of the common school fund unclaimed property administrator under chapter 47-30.1.

2. ~~The money received by the state treasurer shall be paid to the person entitled on proof of that person's right thereto or, if the state treasurer refuses or fails to pay, the person may petition the court which appointed the personal representative, whereupon the court upon notice to the state treasurer may determine the person entitled to the money and order the treasurer to pay it to that person. No interest is allowed thereon and the heir, devisee, or claimant shall pay all costs and expenses incident to the proceeding. If no petition is made to the court within six years after payment to the state treasurer, the right of recovery is barred.~~

Approved March 17, 2003

Filed March 17, 2003

JUDICIAL PROOF

CHAPTER 276

HOUSE BILL NO. 1235 (Representatives Klemin, Kretschmar) (Senator Dever)

LAW ENFORCEMENT DNA DATA BASE

AN ACT to amend and reenact sections 31-13-03, 31-13-05, and 31-13-07 of the North Dakota Century Code, relating to the law enforcement DNA data base.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹²⁷ **SECTION 1. AMENDMENT.** Section 31-13-03 of the North Dakota Century Code is amended and reenacted as follows:

31-13-03. (Effective through July 31, 2004) 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 ~~and~~ 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 ~~and~~ 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. 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 state department of health for deposit in the general fund.

¹²⁷ Section 31-13-03 was also amended by section 5 of Senate Bill No. 2151, chapter 469.

(Effective after July 31, 2004) 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 4 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 and any person who is in the custody of the department on or after August 1, 1995, as a result of a conviction of one of these offenses to have a sample of blood and other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood and 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 and other body fluids as required by this section. Any person convicted on or after August 1, 1995, who is not sentenced to a term of confinement shall provide a sample of blood and other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court. The cost of the procedure must be assessed to the person being tested.

¹²⁸ **SECTION 2. AMENDMENT.** Section 31-13-05 of the North Dakota Century Code is amended and reenacted as follows:

31-13-05. DNA data base established - How utilized. The division shall establish a centralized data base of DNA identification records ~~for convicted sexual offenders.~~ The established system must be compatible with the procedures set forth in the national DNA identification index to ensure data exchange on a national level. The centralized DNA data base must be used to assist federal, state, and local criminal justice and law enforcement agencies within and outside the state in the identification or prosecution of ~~sex-related crimes~~ criminal offenses. The division shall receive, analyze, and classify samples in compliance with section 31-13-04 and shall record the DNA result in a centralized data base for identification and statistical purposes. The division may contract with another laboratory for the analysis and classification of the samples. A report of the analysis certified by the division is admissible in any court as prima facie evidence of the facts stated in the report.

¹²⁹ **SECTION 3. AMENDMENT.** Section 31-13-07 of the North Dakota Century Code is amended and reenacted as follows:

¹²⁸ Section 31-13-05 was also amended by section 7 of Senate Bill No. 2151, chapter 469.

¹²⁹ Section 31-13-07 was also amended by section 8 of Senate Bill No. 2151, chapter 469.

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 conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The division 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.

Approved March 27, 2003

Filed March 28, 2003

JUDICIAL REMEDIES

CHAPTER 277

HOUSE BILL NO. 1263

(Representative Wald)

AUTOMOBILE ACCIDENT DAMAGE LIABILITY

AN ACT to amend and reenact section 32-03.2-02.1 of the North Dakota Century Code, relating to automobile accident damage liability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 32-03.2-02.1 of the North Dakota Century Code is amended and reenacted as follows:

32-03.2-02.1. Automobile accident damage liability. Notwithstanding section 32-03.2-02, in an action by any person to recover direct and indirect damages for injury to property, the damages may not be diminished in proportion to the amount of contributing fault attributable to the person recovering, or otherwise, if:

1. The ~~party~~ person seeking damages is seeking property damages resulting from a ~~two-party~~ motor vehicle accident in which two persons are at fault;
2. The ~~party~~ person seeking damages is seeking to recover direct physical property damages of not more than five thousand dollars and indirect physical property damages not to exceed one thousand dollars; and
3. The percentage of fault of the person against whom recovery is sought is over fifty percent.

This section applies regardless as to whether the person seeking direct and indirect damages for injury to property also seeks damages for personal injury, however, damages for personal injury are not available under this section.

Approved April 1, 2003

Filed April 1, 2003

CHAPTER 278

SENATE BILL NO. 2204

(Senators Wardner, Lyson, Traynor)
(Representatives Eckre, Kretschmar, Wrangham)

GARNISHMENT EXPIRATION

AN ACT to amend and reenact sections 28-21-04.1, 32-09.1-07, 32-09.1-20, and 32-09.1-21 of the North Dakota Century Code, relating to the expiration of a garnishment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-21-04.1 of the North Dakota Century Code is amended and reenacted as follows:

28-21-04.1. Summary execution on moneys retained pursuant to garnishment. When a judgment creditor proposes to execute on moneys owed to the judgment debtor by a third party who is retaining the money pursuant to garnishment, the execution must be made between twenty and ~~two~~ three hundred ~~seventy~~ sixty days after service of the garnishment summons. The execution may be served by the attorney for the judgment creditor or a sheriff, or an agent of either, through certified mail or personal service to the third party. The execution may be directed to the sheriff of any county. A transcript of the judgment need not be filed in the county of the sheriff to whom the execution is directed. Upon receipt, the third party shall remit the amount due under the garnishment to the sheriff or the attorney who shall proceed in all other respects like the sheriff making a similar execution. If the judgment debtor files a claim of exemptions under section 32-09.1-22 on or before twenty days after service of the garnishment summons, no execution may be made against moneys claimed as exempt and retained pursuant to the garnishment summons until the court determines that the moneys being garnished are not exempt.

SECTION 2. 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.

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 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 ~~270~~ 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 ~~270~~ 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)

SECTION 3. AMENDMENT. Section 32-09.1-20 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-20. Termination of garnishment. A garnishee summons lapses and the garnishee is discharged of any liability upon the expiration of ~~two~~ three hundred ~~seventy~~ sixty days after the service of the summons, or a longer period of time either agreed to in writing by the plaintiff and the defendant or ordered by the court. Immediately upon the lapse of the garnishee summons, all earnings, money, property, and effects that the garnishee has been retaining pursuant to the garnishment must be returned to the defendant if the defendant is otherwise legally entitled to receipt of them.

SECTION 4. AMENDMENT. Section 32-09.1-21 of the North Dakota Century Code is amended and reenacted as follows:

32-09.1-21. Continuing lien on wages. A plaintiff may obtain a ~~one~~ two hundred ~~eighty-day~~ seventy-day continuing lien on wages by garnishment. A plaintiff obtaining a continuing lien on wages by garnishment shall mark "continuing lien" on the caption of the garnishee summons. Each garnishment disclosure form must provide the garnishee will continue to hold the nonexempt portion of the defendant's earnings as the earnings accrue through the last payroll period ending on or before ~~one~~ two hundred ~~eighty~~ seventy days from the effective date of the garnishee

summons, or until the sum held equals the amount stated in the garnishee summons, or until the employment relationship terminates, whichever first occurs.

If the garnishee's answers to a garnishment disclosure form provide the amount withheld is less than ten dollars, the garnishee is not required to return subsequent forms to the plaintiff until the amount withheld is ten dollars or more. For any pay period in which the garnishee is not required under this section to return the form to the plaintiff, the garnishee's answers from the previous form remain in effect. At the expected termination of the lien, the plaintiff shall mail the garnishee an additional copy of the garnishment disclosure form upon which the garnishee within ten days shall make further disclosure.

Approved March 21, 2003

Filed March 21, 2003

CHAPTER 279**HOUSE BILL NO. 1461**
(Representatives Niemeier, Sandvig)
(Senator Andrist)**NAME CHANGE PUBLICATION EXCEPTIONS**

AN ACT to amend and reenact subsection 2 of section 32-28-02 of the North Dakota Century Code, relating to exceptions from the requirement to publish notice of a change of name.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 32-28-02 of the North Dakota Century Code is amended and reenacted as follows:

2. 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. 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.

Approved April 21, 2003
Filed April 21, 2003

CHAPTER 280

SENATE BILL NO. 2061

(Judiciary Committee)

(At the request of the Commission on Uniform State Laws)

UNIFORM ARBITRATION ACT

AN ACT to adopt the Uniform Arbitration Act; and to repeal chapter 32-29.2 of the North Dakota Century Code, relating to the Uniform Arbitration Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers in an arbitration proceeding or is involved in the appointment of an arbitrator.
2. "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.
3. "Court" means the district court.
4. "Knowledge" means actual knowledge.
5. "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. Notice.

1. Except as otherwise provided in this Act, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.
2. A person has notice if the person has knowledge of the notice or has received notice.
3. A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

SECTION 3. When Act applies.

1. This Act governs an agreement to arbitrate made after July 31, 2003.
2. This Act governs an agreement to arbitrate made before August 1, 2003, if all the parties to the agreement or to the arbitration proceeding so agree in a record.

3. After July 31, 2005, this Act governs an agreement to arbitrate whenever made. Until August 1, 2005, chapter 32-29.2, as it existed on July 31, 2003, applies to agreements made after June 30, 1987.

SECTION 4. Effect of agreement to arbitrate - Nonwaivable provisions.

1. Except as otherwise provided in subsections 2 and 3, a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this Act to the extent permitted by law.
2. Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:
 - a. Waive or agree to vary the effect of the requirements of subsection 1 of section 5, subsection 1 of section 6, section 8, subsections 1 and 2 of section 17, section 26, or section 28 of this Act;
 - b. Agree to unreasonably restrict the right under section 9 of this Act to notice of the initiation of an arbitration proceeding;
 - c. Agree to unreasonably restrict the right under section 12 of this Act to disclosure of any facts by a neutral arbitrator; or
 - d. Waive the right under section 16 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this Act, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.
3. A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or subsection 1 or 3 of section 3, section 7, section 14, section 18, subsection 4 or 5 of section 20, section 22, section 23, section 24, subsection 1 or 2 of section 24, section 29, or section 30 of this Act.

SECTION 5. Application for judicial relief.

1. Except as otherwise provided in section 28 of this Act, an application for judicial relief under this Act must be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.
2. Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this Act must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court of serving motions in pending cases.

SECTION 6. Validity of agreements to arbitrate.

1. An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement

is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

2. The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.
3. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.
4. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

SECTION 7. Motion to compel or stay arbitration.

1. On motion to a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the the agreement:
 - a. If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and
 - b. If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.
2. On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.
3. If the court finds that there is no enforceable agreement, it may not, pursuant to subsection 1 or 2, order the parties to arbitrate.
4. The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.
5. If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise a motion under this section may be made in any court as provided in section 27 of this Act.
6. If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.
7. If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

SECTION 8. Provisional remedies.

1. Before an arbitrator is appointed and is authorized and able act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.
2. After an arbitrator is appointed and is authorized and able to act:
 - a. The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and
 - b. A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.
3. A party does not waive a right of arbitration by making a motion under subsection 1 or 2.

SECTION 9. Initiation of arbitration.

1. A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.
2. Unless a person objects for lack or insufficiency of notice under subsection 3 of section 15 of this Act not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

SECTION 10. Consolidation of separate arbitration proceedings.

1. Except as otherwise provided in subsection 3, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:
 - a. There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
 - b. The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

- c. The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and
 - d. Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.
2. The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.
3. The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

SECTION 11. Appointment of arbitrator - Service as a neutral arbitrator.

1. If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.
2. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

SECTION 12. Disclosure by arbitrator.

1. Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:
 - a. A financial or personal interest in the outcome of the arbitration proceeding; and
 - b. An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.
2. An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.
3. If an arbitrator discloses a fact required by subsection 1 or 2 to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection

may be a ground under subdivision b of subsection 1 of section 23 of this Act for vacating an award made by the arbitrator.

4. If the arbitrator did not disclose a fact as required by subsection 1 or 2, upon timely objection by a party, the court under subdivision b subsection 1 of section 23 of this Act may vacate an award.
5. An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under subdivision b of subsection 1 of section 23 of this Act.
6. If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under subdivision b of subsection 1 of section 23 of this Act.

SECTION 13. Action by majority. If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them must conduct the hearing under subsection 3 of section 15 of this Act.

SECTION 14. Immunity or arbitrator - Competency to testify - Attorney's fees and costs.

1. An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.
2. The immunity afforded by this section supplements any immunity under other law.
3. The failure of an arbitrator to make a disclosure required by section 12 of this Act does not cause any loss of immunity under this section.
4. In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:
 - a. To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or
 - b. To a hearing on a motion to vacate an award under subdivision a or b of subsection 1 of section 23 of this Act if the movant establishes prima facie that a ground for vacating the award exists.
5. If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of

subsection 4, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney's fees and other reasonable expenses of litigation.

SECTION 15. Arbitration process.

1. An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.
2. An arbitrator may decide a request for summary disposition of a claim or particular issue:
 - a. If all interested parties agree; or
 - b. Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.
3. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.
4. At a hearing under subsection 3, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.
5. If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with section 11 of this Act to continue the proceeding and to resolve the controversy.

SECTION 16. Representation by lawyer. A party to an arbitration proceeding may be represented by a lawyer.

SECTION 17. Witnesses - Subpoenas - Depositions - Discovery.

1. An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.
2. In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.
3. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.
4. If an arbitrator permits discovery under subsection 3, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.
5. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.
6. All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.
7. The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

SECTION 18. Judicial enforcement of preaward ruling by arbitrator. If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under

section 19 of this Act. A prevailing party may make a motion to the court for an expedited order to confirm the award under section 22 of this Act, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modified, or corrects the award under section 23 or 24 of this Act.

SECTION 19. Award.

1. An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.
2. An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

SECTION 20. Change of award by arbitrator.

1. On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:
 - a. Upon a ground stated in subdivision a or c of subsection 1 of section 24 of this Act;
 - b. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding;
or
 - c. To clarify the award.
2. A motion under subsection 1 must be made and notice given to all parties within twenty days after the movant receives notice of the award.
3. A party to the arbitration proceeding must give notice of any objection to the motion within ten days after receipt of the notice.
4. If a motion to the court is pending under section 22, 23, or 24 of this Act, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:
 - a. Upon a ground stated in subdivision a or c of subsection 1 of section 24 of this Act;
 - b. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding;
or
 - c. To clarify the award.

5. An award modified or corrected pursuant to this section is subject to subdivision 1 of section 19 of this Act and sections 22, 23, and 24 of this Act.

SECTION 21. Remedies - Fees and expenses of arbitration proceedings.

1. An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.
2. An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.
3. As to all remedies other than those authorized by subsections 1 and 2, an arbitration may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under section 22 of this Act or for vacating an award under section 23 of this Act.
4. An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.
5. If an arbitrator awards punitive damages or other exemplary relief under subsection 1, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

SECTION 22. Confirmation of award. After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to section 20 or 24 of this Act or is vacated pursuant to section 23 of this Act.

SECTION 23. Vacating award.

1. Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:
 - a. The award was procured by corruption, fraud, or other undue means;
 - b. There was:
 - (1) Evident partiality by an arbitrator appointed as a neutral arbitrator;
 - (2) Corruption by an arbitrator; or
 - (3) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

- c. An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 15 of this Act, so as to prejudice substantially the rights of a party to the arbitration proceeding;
 - d. An arbitrator exceeded the arbitrator's powers;
 - e. There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under subsection 3 of section 15 of this Act not later than the beginning of the arbitration hearing; or
 - f. The arbitration was conducted without proper notice of the initiation of an arbitration as required in section 9 of this Act so as to prejudice substantially the rights of a party to the arbitration proceeding.
2. A motion under this section must be filed within ninety days after the movant receives notice of the award pursuant to section 19 of this Act or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 20 of this Act, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within ninety days after the ground is known or by the exercise of reasonable care would have been known by the movant.
3. If the court vacates an award on a ground other than that set forth in subdivision e of subsection 1, it may order a rehearing. If the award is vacated on a ground stated in subdivision a or b of subsection 1, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subdivision c, d, or f of subsection 1, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in subdivision 2 of section 19 of this Act for an award.
4. If the court denies a motion to vacate an award, the court shall confirm the award unless a motion to modify or correct the award is pending.

SECTION 24. Modification or correction of award.

1. Upon motion made within ninety days after the movant receives notice of the award pursuant to section 19 of this Act or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 20 of this Act, the court shall modify or correct the award if:
 - a. There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;
 - b. The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

- c. The award is imperfect in a matter of form not affecting the merits of the decision on the claim submitted.
2. If a motion made under subsection 1 is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.
3. A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

SECTION 25. Judgment on award - Attorney's fees and litigation expenses.

1. Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.
2. A court may allow reasonable costs of the motion and subsequent judicial proceedings.
3. On application of a prevailing party to a contested judicial proceeding under section 22, 23, or 24 of this Act, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award.

SECTION 26. Jurisdiction.

1. A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.
2. An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under this Act.

SECTION 27. Venue. A motion pursuant to section 5 of this Act must be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

SECTION 28. Appeals.

1. An appeal may be taken from:
 - a. An order denying a motion to compel arbitration;
 - b. An order granting a motion to stay arbitration;
 - c. An order confirming or denying confirmation of an award;

- d. An order modifying or correcting an award;
 - e. An order vacating an award without directing a rehearing; or
 - f. A final judgment entered pursuant to this Act.
2. An appeal under this section must be taken as from an order or a judgment in a civil action.
 3. Agreements to arbitrate between and among insurers and self-insured entities which explicitly renounce a right of appeal are fully enforceable in this state. This chapter does not alter those agreements to create a right of appeal.

SECTION 29. Relationship to Electronic Signatures in Global and National Commerce Act. The provisions of sections 1 and 19 of this Act which relate to the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures must be construed to conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act [Pub. L. 106-229; 15 U.S.C. 7001, 7002].

SECTION 30. REPEAL. Chapter 32-29.2 of the North Dakota Century Code is repealed.

Approved April 8, 2003
Filed April 9, 2003

LABOR AND EMPLOYMENT

CHAPTER 281

HOUSE BILL NO. 1082

(Industry, Business and Labor Committee)
(At the request of the Labor Commissioner)

WAGE AND WORKING CONDITION RULES

AN ACT to amend and reenact sections 34-06-03, 34-06-04, 34-06-14, 34-06-17, and 34-06-19 of the North Dakota Century Code, relating to authority of the labor commissioner to adopt rules on wages and working conditions for employment in this state; and to repeal sections 34-06-09, 34-06-10, 34-06-11, 34-06-12, and 34-06-13 of the North Dakota Century Code, relating to authority of the labor commissioner to issue orders on wages and working conditions for employment in this state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-06-03 of the North Dakota Century Code is amended and reenacted as follows:

34-06-03. Commissioner may adopt standards by rule. The commissioner, ~~in the manner prescribed in this chapter,~~ may ascertain and prescribe by rule:

1. Standards of hours of employment for employees and what are unreasonably long hours for employees in any occupation within this state.
2. Standards of conditions of labor for employees in any occupation within this state and what surroundings or conditions, sanitary or otherwise, are detrimental to the health or morals of employees in any such occupation.
3. Standards of minimum wages for employees in any occupation in this state.
4. Standards of minimum wages for minors in any occupation within this state and what wages are unreasonably low for any such minor workers.

SECTION 2. AMENDMENT. Section 34-06-04 of the North Dakota Century Code is amended and reenacted as follows:

34-06-04. Power to make rules - Posting by employers. The commissioner may prepare, adopt, and promulgate rules and regulations under chapter 28-32 to carry into effect implement the various provisions of this chapter and may make any rules and regulations ~~which may be required for the selection of members of conferences provided for in this chapter and for the regulation of the mode of procedure at such conferences.~~ Before filing the notice of rulemaking and

the proposed draft of rules under section 28-32-10, the commissioner shall send notice of the proposed rules to and solicit input from associations with statewide membership of which the primary focus is representing business or labor interests. The commissioner shall provide a summary of rules adopted under this chapter to every employer affected by the rules. The employer shall keep a copy of the summary posted in a conspicuous place in a commonly frequented area of the employer's establishment in which employees work.

SECTION 3. AMENDMENT. Section 34-06-14 of the North Dakota Century Code is amended and reenacted as follows:

34-06-14. Right of appeal from commissioner's decision limited. Except as otherwise provided in this chapter, all questions of fact arising under this chapter must be determined by the commissioner. There may be no appeal from the decision of the commissioner on any question of fact, but there is a right of appeal from the commissioner to the district court of Burleigh County from any ruling or holding on any question of law included or embodied in any decision ~~or order~~ of the commissioner, and there is a right of appeal from the district court to the supreme court of this state. In all such appeals, the attorney general shall appear for and represent the commissioner.

SECTION 4. AMENDMENT. Section 34-06-17 of the North Dakota Century Code is amended and reenacted as follows:

34-06-17. Investigation of compliance with ~~orders~~ rules - Failure to observe or comply. The commissioner, from time to time, shall investigate and ascertain whether or not employers in this state are observing and complying with ~~his orders~~ rules issued pursuant to the provisions of this chapter, and shall take such steps as may be necessary to cause the prosecution of employers failing to observe or comply therewith.

SECTION 5. AMENDMENT. Section 34-06-19 of the North Dakota Century Code is amended and reenacted as follows:

34-06-19. Penalty for violation of chapter. Any person who violates any of the provisions of this chapter, or any ~~order, rule, or regulation~~ issued pursuant thereto, is guilty of a class B misdemeanor.

SECTION 6. REPEAL. Sections 34-06-09, 34-06-10, 34-06-11, 34-06-12, and 34-06-13 of the North Dakota Century Code are repealed.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 282

SENATE BILL NO. 2079

(Industry, Business and Labor Committee)
(At the request of the Labor Commissioner)

EMPLOYMENT AGENT DEFINITION AND LICENSING

AN ACT to amend and reenact subsection 4 of section 34-13-01, sections 34-13-03 and 34-13-12, subsection 2 of section 34-13-13.1, and subsection 1 of section 34-13-15 of the North Dakota Century Code, relating to definition of employment agent or employment agency and licensure of employment agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 34-13-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Employment agent" or "employment agency" means any person, firm, corporation, limited liability company, or association in this state engaged for hire or compensation in the business of furnishing:
 - a. Persons seeking employment or changing employment, with information or other service enabling or tending to enable such persons to procure employment, by or with employers, other than such employment agent; or
 - b. Any other person, firm, corporation, limited liability company, or association who may be seeking to employ or may be in the market for help of any kind, with information enabling or tending to enable such other person, firm, corporation, limited liability company, or association to procure such help.

The term "employment agent" or "employment agency" does not include any person, firm, corporation, limited liability company, or association employing individuals to render part-time or temporary services to or for a third person, if the person, firm, corporation, limited liability company, or association employing the individuals, in addition to wages or salaries, pays social security and unemployment insurance taxes, provides workers' compensation coverage, and is responsible for the acts of the employees while rendering services to or for a third person. The term "employment agent" or "employment agency" does not include a person, firm, corporation, limited liability company, or association charging service fees or any other charges exclusively to employers.

SECTION 2. AMENDMENT. Section 34-13-03 of the North Dakota Century Code is amended and reenacted as follows:

34-13-03. License application - Schedule of fees - License issuance and revocation. Annually, every applicant for a license shall file with the commissioner a written application stating the name and address of the applicant, the street and number of the building in which the employment agency is to be maintained, the name of the person who is to have the general management of the office, the name

under which the business of the office is to be carried on, whether or not the applicant is pecuniarily interested in any other business of a like nature, and if so, where. Such application must also state whether the applicant is the only person pecuniarily interested in the business to be carried on under the license and must be signed by the applicant and sworn to before a notary public. If the applicant is a corporation, the application must state the names and addresses of the officers and directors of the corporation and must be signed and sworn to by the president and treasurer thereof. If the applicant is a limited liability company, the application must state the names and addresses of the managers and governors of the limited liability company and must be signed and sworn to by the president and treasurer thereof. If the applicant is a partnership, the application must also state the names and addresses of all partners therein and must be signed and sworn to by all of them the managing partner or partners. The application must also state whether or not the applicant is, at the time of making application, or has at any previous time been, engaged or interested in, or employed by anyone engaged in, the business of conducting an employment agency, either in this state or any other, and if so, when and where. The application must also give as reference the names and addresses of at least three persons of reputed business or professional integrity, located within the state. Every applicant for a license to engage in the business of an employment agent shall, at the time of making application for said license, file with the commissioner a schedule of the fees or charges to be collected by such employment agent for any services rendered, together with all rules and regulations that may in any way affect the fees charged or to be charged for any service. Such fees and such rules or regulations may thereafter be changed by filing an amended or supplemental schedule showing such charges, with the commissioner. It is unlawful for any employment agent to charge, demand, collect, or receive a greater compensation for any service performed by the agent than is specified in such schedule filed with the commissioner.

The commissioner may issue a license to an employment agent and refuse to issue a license if, after due investigation, the commissioner finds that the character of the applicant makes the applicant unfit to be an employment agent, or when the premises for conducting the business of an employment agent are found to be unfit. The commissioner may revoke a license upon due notice to the holder of the license and upon due cause. Failure to comply with the duties, terms, conditions, or provisions of this chapter, or any lawful orders of the commissioner is due cause to revoke a license.

SECTION 3. AMENDMENT. Section 34-13-12 of the North Dakota Century Code is amended and reenacted as follows:

34-13-12. Schedule of charges posted and printed on receipts - Sections of law posted - Information given to applicant for employment. Every employment agent possessing a valid license shall post in a conspicuous place in a room used for business purposes in the employment office and which is open to the public, a schedule showing the amount of the service charges to be made to ~~either employees, employers, or both~~. The amount collected may not exceed the schedule of charges indicated.

A licensed employment agent shall post in a conspicuous place in a room used for business purposes in the employment office a copy of sections 34-13-12 and 34-13-15, provided by the commissioner.

No employment agent holding a license may direct any applicant to apply for employment at any place outside of the office of such employment agent without first giving to such applicant, in written form, the name and address of the employment

agent, the name of the applicant, the name and address of the person to whom the applicant is referred, and the kind of employment supposed to be obtainable at such place. Nothing herein may be construed to prohibit an employment agent from directing an applicant by telephone to apply for employment, but such telephone message must be confirmed in writing by the employment agent within twenty-four hours after the telephone conversation, and a ~~carbon~~ copy of such confirmation must be kept on file at the place of business of the employment agent for a period of one year.

SECTION 4. AMENDMENT. Subsection 2 of section 34-13-13.1 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~This section applies to all licensees.~~ Every licensee employment agency shall submit copies of all contracts and fee schedules used by ~~such the~~ agency or agent to the commissioner of labor for approval. No contract or fee between a ~~licensee~~ an employment agency and ~~an employer or~~ an employee is valid without the commissioner's approval. In approving or disapproving such contracts and fees, the commissioner shall issue a written determination. This determination is subject to review and appeal under chapter 28-32.

SECTION 5. AMENDMENT. Subsection 1 of section 34-13-15 of the North Dakota Century Code is amended and reenacted as follows:

1. Every license, ~~of whatever classification,~~ must be hung in a conspicuous place in the main office of the employment agency.

Approved March 14, 2003
Filed March 17, 2003

CHAPTER 283**HOUSE BILL NO. 1382**
(Representatives N. Johnson, Grosz)
(Senator Krebsbach)**DIRECT DEPOSIT OF WAGES**

AN ACT to amend and reenact section 34-14-02 of the North Dakota Century Code, relating to direct deposit of wages.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 34-14-02 of the North Dakota Century Code is amended and reenacted as follows:

34-14-02. Agreed payday - Direct deposit. Every employer shall pay all wages due to employees at least once each calendar month on regular agreed paydays designated in advance by the employer, in lawful money of the United States ~~or~~, with checks on banks convenient to the place of employment. ~~If an employee participates, or with direct deposit in a direct deposit program, that employee's employer shall deposit the employee's wages into the financial institution of the employee's choice. An employer may not require an employee to directly deposit the employee's wages into a financial institution.~~

Approved April 1, 2003
Filed April 1, 2003

LIENS

CHAPTER 284

HOUSE BILL NO. 1195

(Representative Klemin)
(Senator Trenbeath)

ATTORNEY'S LIENS

AN ACT to amend and reenact section 35-20-08 of the North Dakota Century Code, relating to attorney's liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-20-08 of the North Dakota Century Code is amended and reenacted as follows:

35-20-08. Attorney's lien - ~~On papers~~ - On money - Against a judgment.

An attorney has a lien for a general balance of compensation in and for each case upon:

1. ~~Any papers belonging to his client which have come into his hands in the course of his professional employment in the case for which the lien is claimed.~~
2. Money in ~~his~~ the attorney's hands belonging to ~~his~~ the attorney's client in the case.
3. 2. Money due ~~his~~ the attorney's client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed, from the time of giving notice in writing to ~~such~~ the adverse party, or the attorney of such party if the money is in the possession or under the control of such attorney, which notice must state the amount claimed and in general terms for what services. After judgment in any court of record, the notice may be given and the lien made effective against the judgment debtor by entering the same in the judgment docket opposite the entry of the judgment.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 285**SENATE BILL NO. 2292**

(Senators Cook, Lyson)
(Representatives Devlin, Eckre, Porter)

LANDLORD'S MOBILE HOME LIENS

AN ACT to amend and reenact section 35-20-17 of the North Dakota Century Code, relating to landlord's mobile home liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-20-17 of the North Dakota Century Code is amended and reenacted as follows:

35-20-17. Landlord's mobile home lien. A landlord of a mobile home lot has a lien for accrued rents, storage, and removal ~~of~~ relating to any mobile home left on the lot after the tenant has vacated the premises after an eviction or the expiration of the lease term. A lien under this section does not have priority over a prior perfected security interest in the property. A holder of a lien under this section may retain possession of the mobile home subject to the lien until the amount due is paid. A lienholder may sell a mobile home thirty days after the lienholder mails notice of the lien to the owner of the mobile home and secured parties of record. After the sale, the lienholder shall forward to the former owner any money resulting from the sale of the mobile home in excess of the amount owed to the lienholder for accrued rents, storage, and removal ~~of~~ relating to the mobile home. If the location of the former mobile home owner is not known, any money from a sale in excess of the amount owed is presumed abandoned under chapter 47-30.1.

Approved March 12, 2003

Filed March 12, 2003

LIVESTOCK

CHAPTER 286

SENATE BILL NO. 2196

(Senators Klein, Flakoll)
(Representatives Glassheim, Wrangham)

BOARD OF ANIMAL HEALTH MEMBERSHIP

AN ACT to amend and reenact section 36-01-01 of the North Dakota Century Code, relating to membership of the state board of animal health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-01-01 of the North Dakota Century Code is amended and reenacted as follows:

36-01-01. State board of animal health - Appointment - Terms - Qualifications.

1. The state board of animal health consists of ~~eight~~ nine members appointed by the governor for terms of seven years each with their terms of office so arranged that two terms expire on the first day of August in one year and one term expires on the first day of August in each of the next six years. The term of the individual appointed to represent the nontraditional livestock industry expires on August 1, 2010. No individual may be appointed to more than two 7-year terms on the board.
2. Each member of the board must be a qualified elector of this state. Each member of the board, immediately after appointment, shall take the oath of office required of civil officers.
3. The members of the board must include:
 - a. One individual who is actively engaged and financially interested in the commercial beef cattle industry and who shall represent the industry on the board;
 - b. One individual who is actively engaged and financially interested in the registered purebred beef cattle industry and who shall represent the industry on the board;
 - c. One individual who is actively engaged and financially interested in the dairy cattle industry and who shall represent the industry on the board;
 - d. One individual who is actively engaged and financially interested in the swine industry and who shall represent the industry on the board;

- e. One individual who is actively engaged and financially interested in the sheep industry and who shall represent the industry on the board;
 - f. One individual who is actively engaged and financially interested in the bison industry and who shall represent the industry on the board; ~~and~~
 - g. ~~Two individuals~~ One individual who is actively engaged and financially interested in the nontraditional livestock industry and who shall represent the industry on the board; and
 - h. Two individuals who are licensed veterinarians.
4. Vacancies occurring prior to the expiration of terms of office must be filled by appointment by the governor and must be for the balance of the unexpired term.
 5. Recommendations for the appointment of individuals to the board may be made to the governor by the North Dakota stockmen's association for the individuals representing commercial beef cattle, by the various registered purebred beef cattle associations for the individual representing the registered purebred beef cattle industry, by the various dairy breed associations for the individual representing the dairy cattle industry, by the North Dakota swine breeders' association for the individual representing the swine industry, by the North Dakota wool growers' association for the individual representing the sheep industry, by the state veterinary medical association for the two veterinarians, by the North Dakota buffalo association for the individual representing the bison industry, by the nontraditional livestock industry for the individual representing the nontraditional livestock industry, and by any associations within this state representing livestock industries as the governor may permit. Two recommendations must be submitted for each position to be filled.

Approved April 4, 2003

Filed April 4, 2003

CHAPTER 287

SENATE BILL NO. 2209

(Senators Erbele, Bowman, Taylor)
(Representatives DeKrey, Froelich, Nicholas)

BRAND RECORDING AND ESTRAYS

AN ACT to create and enact five new sections to chapter 36-09 of the North Dakota Century Code, relating to brand ownership, recording, and inspection; to amend and reenact sections 36-09-02.1, 36-09-04, 36-09-06, 36-09-09, 36-09-10, 36-09-13, 36-09-20, 36-09-23, 36-13-01, 36-13-02, 36-13-03.1, 36-13-04, 36-13-05, 36-13-06, 36-13-07, 36-13-08, 36-22-01, and 36-22-06 of the North Dakota Century Code, relating to brand recording, cancellation, and inspection, bills of sale, and estrays; to repeal sections 36-09-03 and 36-13-03 of the North Dakota Century Code, relating to brands or marks on poultry and the sale of estrays; to provide a penalty; 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 36-09-02.1 of the North Dakota Century Code is amended and reenacted as follows:

36-09-02.1. Standards for recording brands or marks.

1. The chief brand inspector shall record the brand or mark described in the application except that the chief brand inspector shall refuse to record any brand or mark that:
 - a. ~~That has~~ Has been ~~previously~~ recorded in favor of another person ~~or one that is~~.
 - b. Has been recorded in another state.
 - c. Is deceptively similar to any previously recorded livestock brand or mark. The same or similar livestock brand or mark which is to be placed on a different part of the animal from that described in the previous record may be recorded.
2. ~~That contains~~ Contains less than two characters; ~~except that a single character brand may be recorded for sheep and goats, or one that contains any of the following characters:~~
 - a. ~~e.~~ e. The letters Contains:
 - (1) The letter "g" or;
 - (2) The letter "q" or letters that are;
 - (3) Any letter not in the gothic style;
 - (4) A dot;

- b. (5) ~~The Arabic numerals numeral "0" or "1" or any;~~
 (6) ~~Any non-Arabic numerals. numeral;~~
- e. (7) ~~Any symbols symbol other than permissible symbols. Permissible symbols are limited to the following: a diamond, a half-diamond, an arrow, a mill iron, a cross, a heart, a box, a triangle, a quarter circle, a bar, or a star.~~
3. ~~That involves any letters, numerals, or symbols; and~~
 (8) ~~Any letter, number, or symbol within another letter, numeral number, or symbol.~~
4. f. ~~That is illegible~~ Is not legible when placed on the livestock.
5. g. ~~That indicates placement~~ Would be placed upon each kind of the livestock in a location other than a permissible location.
2. ~~Permissible~~ For purposes of this section, permissible locations for cattle are the left and right shoulder, the left and right rib, and the left and right hip. Permissible locations for horses and mules are the left and right jaw, the left and right shoulder, and the left and right hip. Permissible locations for buffalo are the left and right rib, and the left and right hip. The chief brand inspector may determine permissible locations for other types of livestock must be established by the chief brand inspector as necessary. The determination of permissible locations under this section may not be considered as a rule is not subject to rulemaking under chapter 28-32.
3. Notwithstanding any ~~provisions~~ other provision of this section ~~to the contrary,~~ the chief brand inspector shall accept for rerecording under section 36-09-09 ~~any~~ or under section 5 of this Act:
- a. Any previously recorded livestock brand or mark.
- b. A single character brand provided the animals on which the brand is to be placed are goats or sheep.

SECTION 2. AMENDMENT. Section 36-09-04 of the North Dakota Century Code is amended and reenacted as follows:

36-09-04. Record of brands kept - Inspection of record - Certificate of brand ownership of brand. The chief brand inspector shall keep a record of all marks and brands showing the names and residences of the persons owning the marks and brands, a description and facsimile of each mark or brand, and in the case of livestock, the range occupied by the livestock, as nearly as may be determined. The record is open to ~~the~~ inspection of by any person ~~interested therein.~~ The chief brand inspector shall deliver to the owner of each mark or brand a certificate ~~thereof, and~~ of the mark or brand. The certificate is evidence of ownership of the mark or brand described ~~therein~~ in the certificate.

SECTION 3. AMENDMENT. Section 36-09-06 of the North Dakota Century Code is amended and reenacted as follows:

36-09-06. Cancellation of brand.

1. The chief brand inspector shall cancel a legally recorded brand ~~only~~ when ~~the~~:
 - a. The chief brand inspector receives for filing a bill of sale of such the brand properly executed by the record owner as shown by the records in the chief brand inspector's office; or in instances where
 - b. When it is found that a brand has been issued inadvertently in duplication of a previously recorded brand.
2. The chief brand inspector may cancel a legally recorded brand if the chief brand inspector determines that the brand has been recorded in another state.

SECTION 4. AMENDMENT. Section 36-09-09 of the North Dakota Century Code is amended and reenacted as follows:

36-09-09. Cancellation of brands - Rerecording - Limitation on brands.

On the first day of January 1966, each ~~and every~~ livestock brand or mark must be canceled and no person; ~~copartnership, company, firm, or corporation~~ may use or have any right, title, or interest in or to any livestock brand or mark previously recorded in this state. If a person; ~~copartnership, company, firm, or corporation~~ should desire to continue ownership ~~thereof~~ of a brand or mark, the brand or mark must be rerecorded on or before January first, and each ten years thereafter. Rerecording is not required from an owner who has registered for a new brand within six months prior to the date provided for the rerecording of brands ~~thereafter~~.

SECTION 5. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Cancellation of brands - Rerecording - Limitation on brands. On the first day of January 2006, each livestock brand or mark must be canceled and no person may use or have any right, title, or interest in or to any livestock brand or mark previously recorded in this state. If a person should desire to continue ownership of a brand or mark, the brand or mark must be rerecorded on or before January first, and every five years thereafter. Rerecording is not required from an owner who has registered for a new brand within six months before the date provided for the rerecording of brands.

SECTION 6. AMENDMENT. Section 36-09-10 of the North Dakota Century Code is amended and reenacted as follows:

36-09-10. Brands to be rerecorded every ten years Failure to rerecord brand - Abandonment. Failure to rerecord any previously recorded livestock brand or mark on or before the time specified; ~~in accordance with this chapter, section 36-09-09 or section 5 of this Act~~ is deemed an ~~absolute~~ abandonment of the previously recorded ~~livestock~~ brand or mark. For one year from the date of cancellation, the chief brand inspector may not reassign a canceled brand or mark to any person other than the registered owner at the time of cancellation. By written notice to the chief brand inspector, the registered owner at the time of cancellation may authorize reassignment of the brand or mark within the one-year period. Thereafter the chief brand inspector shall accept any regular application for the issuance to anyone of the abandoned livestock brand or mark, provided the

abandoned livestock brand or mark complies with the standards of section 36-09-02.1. The chief brand inspector shall issue a certificate for the use of the abandoned brand or mark within this state, ~~except that the brand or mark may not be issued if it consists of a single figure or single letter~~ provided the abandoned livestock brand or mark complies with the standards of section 36-09-02.1.

SECTION 7. AMENDMENT. Section 36-09-13 of the North Dakota Century Code is amended and reenacted as follows:

36-09-13. Recording and rerecording of brands - Fee. The rerecording of abandoned livestock brands or marks, and the recording of new brands and marks, must conform ~~in all respects~~ to this chapter. Each application for recording and rerecording must be accompanied by a fee for each place or position upon each type of livestock where the brand or mark is to be placed. ~~The fee must be set by the board of animal health, upon the recommendation~~ shall establish the fee, with the advice and consent of the North Dakota stockmen's association, and. The fee may not exceed ~~fifteen~~ twenty-five dollars.

SECTION 8. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Use of unrecorded brand - Penalty. A person is guilty of a class B misdemeanor if the person places upon an animal a brand that has not been recorded in accordance with this chapter.

SECTION 9. AMENDMENT. Section 36-09-20 of the North Dakota Century Code is amended and reenacted as follows:

36-09-20. Bill of sale to be given and kept - Copy with shipment - Effect - Penalty.

1. ~~No~~ A person may not sell cattle, horses, mules, or any other livestock carrying a registered brand unless:
 4. a. The seller is the owner of the registered brand and delivers a bill of sale for the cattle, horses, mules, or other livestock to the purchaser; or
 2. b. The seller delivers to the purchaser a bill of sale executed by the owner of the registered brand and endorsed by the seller evidencing the later transaction.
2. The bill of sale must ~~contain the~~ include:
 - a. The date, signature, and residence;
 - b. The name, address, and signature of the seller and;
 - c. The name, address, and signature of an individual who is at least eighteen years of age and who can verify the name and signature of the seller;
 - d. The name and address of the buyer, and showing the;
 - e. The total number of animals sold, describing;

- f. A description of each animal sold as to sex and kind;~~;~~ and ~~describing~~
 - g. A description of the registered brands.
3. The bill of sale must be kept by the buyer for two years and as long thereafter as ~~he~~ the buyer owns any of the animals described ~~therein~~ in the bill of sale.
 4. A copy of the bill of sale must be given to each hauler of ~~such~~ the livestock, other than railroads, and must go with the shipment of ~~such~~ the livestock while in transit.
 5. ~~Such~~ The bill of sale or a copy of the bill of sale must be shown by the possessor on demand to any peace officer or brand inspector.
 6. ~~Such~~ The bill of sale is prima facie evidence of the sale of the livestock ~~therein~~ described; ~~provided, that no such~~ in the bill of sale.
 7. A bill of sale is not required relative to sales of livestock covered by a legal livestock brand inspection.
 8. Any ~~violation of~~ person who violates this section is guilty of an infraction.

SECTION 10. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

False proof of ownership - Sale of livestock - Penalty. A person that knowingly provides false proof of ownership in conjunction with the sale of livestock is guilty of a class B misdemeanor.

SECTION 11. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Proof of ownership - Alteration or falsification - Penalty. A person that, with intent to deceive or harm another, knowingly and falsely makes, completes, or alters any writing evidencing proof of livestock ownership is guilty of a class B felony.

SECTION 12. AMENDMENT. Section 36-09-23 of the North Dakota Century Code is amended and reenacted as follows:

36-09-23. Removal of livestock from state - Brand inspection - Penalty.

1. No person may remove cattle, horses, or mules from this state or to within a mile [1.61 kilometers] of any boundary of the state for the purpose of removal unless the livestock has been inspected for marks and brands by an official brand inspector of the North Dakota stockmen's association and a certificate of inspection must accompany the livestock to destination. ~~In lieu of the inspection, the owner or possessor may make and sign an invoice or waybill covering the stock showing marks and brands, number, sex and kind of the stock, and the consignee and market destination where official brand inspection is provided by or for the stockmen's association and mail a copy of the invoice or waybill to the association before the stock leaves the state.~~

2. It is unlawful for the owner or possessor to remove any livestock from any place of regular official brand inspection unless and until official brand inspection has been made and the brand inspection certificate issued.
3. A person who violates this section is guilty of a class B misdemeanor. A person who violates this section a second time within fifteen years or violates this section three or more times is guilty of a class C felony.

SECTION 13. A new section to chapter 36-09 of the North Dakota Century Code is created and enacted as follows:

Brand inspection services - Out-of-state facilities. An out-of-state livestock facility that seeks to obtain brand inspection services from this state may file a written request with the North Dakota stockmen's association. Upon receiving a request for brand inspection services, the North Dakota stockmen's association shall petition the board of animal health for permission to provide the services. The board of animal health shall adopt rules setting forth the criteria that must be met before out-of-state brand inspections are approved.

SECTION 14. AMENDMENT. Section 36-13-01 of the North Dakota Century Code is amended and reenacted as follows:

36-13-01. Estrays - Possession. Any A person may take possession of an animal as an estray when it is on property which he that the person owns or controls, and when he provided the person does not know who is the owner of owns the animal estray. As soon as practicable he shall make careful examination of the said animal the person shall examine the estray to determine the presence and identity of any brand upon it, the location thereof of the brand, and any other marks or scars which that may identify the same and he estray. The person shall notify the sheriff of the county wherein in which the estray was found of such action, who or the chief brand inspector. Once notified, the sheriff or the chief brand inspector shall record the date and time of the notification and all information obtained by him as to brands or other marks and location from the person which may be helpful in determining ownership thereof of the estray. The chief brand inspector shall direct a brand inspector to examine the estray for marks and brands.

SECTION 15. AMENDMENT. Section 36-13-02 of the North Dakota Century Code is amended and reenacted as follows:

36-13-02. Estray notice by sheriff Estrays - Notification of chief brand inspector. Upon notification When notified of an estray possession, the notified a sheriff shall forthwith publish a notice in the official county newspaper once weekly for two weeks unless the animal is earlier claimed or sold, whichever is earlier. Two or more animals which are taken up by the same person at the same time may be described in one notice.

The published notice must be on a form prescribed by the chief brand inspector, and at the time of first publication of any notice must be forwarded to him for his files and the chief brand inspector shall send an official brand inspector to examine the animal for marks and brands and report his findings to the chief brand inspector and the sheriff. The notice must briefly describe the estray by color, sex, probable age and weight, and any distinctive brand or marks, and must show the date and place of taking up as well as the name and address of possessor contact the chief brand inspector and provide to the chief brand inspector any identifying or descriptive information regarding the estray.

SECTION 16. AMENDMENT. Section 36-13-03.1 of the North Dakota Century Code is amended and reenacted as follows:

36-13-03.1. Alternate disposition of estray. ~~In lieu of disposition of an animal as an estray as directed in the preceding section of this chapter, any A person finding that finds an estray upon his premises the ownership of which is unknown to him on property that the person owns or controls may dispose of the same estray by delivering such animal it to a public livestock market licensed under the laws of by this state as soon as practical after discovery of such animal upon his premises, provided he the person first makes a reasonable effort to determine the ownership thereof. At the time of delivery of an estray as provided in this section, the person so delivering of the estray. The person shall inform the brand inspector that the animal is being delivered as is an estray. Such animal, The estray and the proceeds of the its sale thereof, must thereupon be disposed of as provided in chapter 36-22.~~

SECTION 17. AMENDMENT. Section 36-13-04 of the North Dakota Century Code is amended and reenacted as follows:

36-13-04. Claiming estrays. ~~When If before the sale of an estray the owner of an the estray; prior to the sale thereof, presents to the person in possession of the animal his possessing the estray an affidavit stating his that includes the owner's name, place of residence and that he is the actual owner of the estray, describing it, then, a declaration of ownership, and a description of the estray, the person in possession of the animal possessing the estray shall release it to the claimant owner on payment of the all lawful charges. The person formerly in possession shall then promptly send the affidavit to the sheriff, who shall file and keep the same as record of the disposition of the estray. After there has been a sale of an estray under the provisions of this chapter, the former owner of an estray has no rights in the animal.~~

~~If the former owner of an estray files his verified claim with the board of county commissioners within one year after the date of the estray sale, and proves his former ownership to the satisfaction of the board, it shall order paid to the former owner and any lienors, as their interests may appear, the balance from the sale which is in the county treasury.~~

SECTION 18. AMENDMENT. Section 36-13-05 of the North Dakota Century Code is amended and reenacted as follows:

36-13-05. Lawful charges.

1. ~~Any A person lawfully taking that takes possession of an estray in accordance with this chapter may charge for any actual damage done to his the person's crops or premises property by the animal, his actual costs of estray.~~
2. ~~A person that takes possession of an estray in accordance with this chapter may charge for any costs incurred after the person has notified either the sheriff or the chief brand inspector, provided the costs were incurred for the care and feeding and caring for it, and any expenses incurred of the estray or were incurred in complying with this chapter, provided that no costs, charges, or expenses may be allowed which were incurred prior to notifying the sheriff that the animal was taken up except damage to crops or premises.~~

3. If the interested parties person who takes possession of the estray and the owner of the estray cannot agree as to the amount of charges that are payable, each shall choose one person and the two so chosen shall choose a third person and then the. The three persons so chosen shall arbitrate and determine the amount of the charges. ~~The A~~ determination of these arbitrators under this subsection is final if no sale of the animal has been had. In the event of a sheriff's sale the sheriff shall determine the amount of the charges to be received by the person taking possession of the estray.

SECTION 19. AMENDMENT. Section 36-13-06 of the North Dakota Century Code is amended and reenacted as follows:

36-13-06. Liability for failure to give proper notice.

1. Any person who that takes up possession of an estray and is liable to the owner of the estray for treble damages if the person fails to:
 1. ~~Fails to make reasonable examination of the animal~~
 - a. Examine the estray to determine the presence of brands or marks or scars to identify the same as herein required and identity of any brand, mark, or scar; and
 2. ~~Fails to notify~~
 - b. Notify either the sheriff or the chief brand inspector as provided in this chapter, is liable to the owner thereof for triple all damages caused thereby, and.
2. A person liable for damages under subsection 1 may not make any claim or charge, or seek damages in connection with the animal estray.

SECTION 20. AMENDMENT. Section 36-13-07 of the North Dakota Century Code is amended and reenacted as follows:

36-13-07. Liability for death, theft, or escape of estray. ~~If the person who that takes up possession of an estray notifies either the sheriff or the chief brand inspector, as provided in this chapter, he the person is not responsible liable if, without his fault, such on the part of the person, the estray thereafter dies, is stolen, or escapes and wanders away.~~

SECTION 21. AMENDMENT. Section 36-13-08 of the North Dakota Century Code is amended and reenacted as follows:

36-13-08. Taking up estray - Compliance with chapter - Penalty. Any person ~~taking up~~ that takes possession of an estray who and willfully fails to comply with ~~the provisions of this chapter~~ is guilty of a class B misdemeanor.

SECTION 22. AMENDMENT. Section 36-22-01 of the North Dakota Century Code is amended and reenacted as follows:

36-22-01. Estray defined. Any marked or branded cattle, horse, or mule found at any livestock market, to which a shipper cannot produce title or satisfactory evidence of ownership, is considered ~~as to be~~ an estray.

SECTION 23. AMENDMENT. Section 36-22-06 of the North Dakota Century Code is amended and reenacted as follows:

36-22-06. Payment to owners of estrays. The secretary of ~~said~~ the North Dakota stockmen's association, upon satisfactory proof of ownership of any estray for which the association has received the money, shall, with the approval of the board of directors of ~~said~~ the association, pay ~~such~~ the owner of the estray the amount received from the sale of ~~such~~ the estray; provided, ~~however,~~ that ~~such~~ the ownership of the estray must be proven within one year after the publication of the notice provided for in section 36-22-07. Any interest earned on the money reverts to the North Dakota stockmen's association fund.

SECTION 24. REPEAL. Sections 36-09-03 and 36-13-03 of the North Dakota Century Code are repealed.

SECTION 25. EFFECTIVE DATE. Section 5 of this Act becomes effective on July 1, 2006.

SECTION 26. EXPIRATION DATE. Section 4 of this Act is effective through June 30, 2006, and after that date is ineffective.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 288

HOUSE BILL NO. 1503

(Representative Monson)

(Senator Erbele)

(Approved by the Delayed Bills Committee)

LIVESTOCK RUNNING AT LARGE

AN ACT to create and enact a new section to chapter 36-11 of the North Dakota Century Code, relating to livestock; to amend and reenact sections 36-11-01, 36-11-07, 36-11-09, 36-11-10, 36-11-11, 36-11-12, 36-11-13, 36-11-14, 36-11-15, 36-11-16, 36-11-17, 36-11-18, 36-11-19, and 36-11-20 of the North Dakota Century Code, relating to livestock running at large; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 36-11 of the North Dakota Century Code is created and enacted as follows:

Livestock - Definition. As used in this chapter, "livestock" includes bison, cattle, goats, horses, mules, sheep, and swine.

SECTION 2. AMENDMENT. Section 36-11-01 of the North Dakota Century Code is amended and reenacted as follows:

36-11-01. ~~Stock~~ Livestock running at large prohibited - Penalty. No ~~cattle, horses, mules, swine, goats, or sheep~~ livestock may be permitted to run at large. Any owner or possessor of ~~any such animal~~ livestock who willfully permits ~~it~~ the livestock to run at large through failure to maintain a lawful fence as provided in section 47-26-01, except in grazing area as provided in section 36-11-07, is guilty of a class B misdemeanor.

SECTION 3. AMENDMENT. Section 36-11-07 of the North Dakota Century Code is amended and reenacted as follows:

36-11-07. Liability of owners of ~~horses, mules, cattle, sheep, goats, and swine~~ livestock injuring persons or property of others.

1. The owner or possessor of any ~~horse, mule, head of cattle, sheep, goat, or swine, which~~ livestock that inflicts ~~any~~ damage or injury to:
 - a. Motor vehicles or their occupants upon a public highway within a grazing area ~~wherein~~ in which proper signs, approved by the ~~state highway commissioner~~ director of the department of transportation, indicating limited liability are posted at a point adjacent to ~~such~~ the highway not less than two hundred feet [60.96 meters] nor more than four hundred feet [121.92 meters] from the entrance of ~~such~~ the highway into ~~such~~ the grazing area and so posted as to be plainly visible to ~~persons~~ individuals approaching ~~such~~ the entrance; or

- b. The crops or other property of another or trespasses upon the lands or premises of another, where ~~such~~ the damaged or injured crops, property, lands, or premises are located within a grazing area, except as provided in section 36-11-09, is not liable to any person sustaining ~~such~~ damages or injury.
2. For the purpose of this section, a "grazing area" means any area designated as ~~such~~ a grazing area by a majority of the board of county commissioners, either upon the motion of one of the ~~said~~ commissioners or upon presentation to the board of a petition signed by a majority of the real property owners and tenants in the area in which it is proposed that a grazing area be established. A grazing area must be used primarily for the purpose of grazing livestock and enclosed by a fence or other suitable means.
3. Except as provided above, the owner or possessor of any ~~horse, mule, head of cattle, sheep, goat, or swine~~ which livestock that inflicts any damage to the crops or other property of another or which trespasses upon the lands of another, whether ~~such~~ the lands are fenced or unfenced, is liable to the persons sustaining the injuries or to the owner of the lands for all damages suffered by ~~him~~ by the owner, together with the statutory costs of the action to recover ~~such~~ damages, and a reasonable attorney's fee ~~therein to be~~ allowed by the court.

SECTION 4. AMENDMENT. Section 36-11-09 of the North Dakota Century Code is amended and reenacted as follows:

36-11-09. Action permitted when livestock breaks through lawful fence.

Any person owning or having ~~in his~~ in charge of any livestock ~~which~~ that goes through, over, or under any lawful fence is liable for all resulting damages. Any ~~animal which livestock that~~ livestock that goes through, over, or under a lawful fence is deemed a trespassing ~~animal livestock~~ livestock for the purposes of this chapter.

SECTION 5. AMENDMENT. Section 36-11-10 of the North Dakota Century Code is amended and reenacted as follows:

36-11-10. Trespassing ~~animals~~ livestock may be distrained - Notice to owner - Security for release.

1. The person suffering damages by reason of the trespass of any livestock may take up the offending ~~animal or animals~~ livestock. The person suffering damages shall notify the owner, or the person in possession of the livestock at the time of the trespass, of the seizure of ~~such animal or animals~~ the livestock without unnecessary delay, if the owner or person in possession is known to the person suffering damages and is a resident of, and present within, the county in which the trespass occurred. The person suffering damages may retain ~~such animal or animals~~ the livestock in that person's custody until:
4. a. The damages sustained by reason of ~~such~~ the trespass and the costs in the action to recover ~~such~~ the damages have been paid; or
2. b. Good and sufficient security for the payment of the damages and costs is given, ~~such provided the security to be~~ is approved by a district judge serving the county in which the livestock is taken up.

2. If the owner of the offending ~~animal or animals~~ livestock elects to give security, the owner shall give to the person holding the livestock notice that security will be given and the date and hour when ~~such~~ the security will be submitted to the district judge for approval. The notice must be given at least one day ~~prior to~~ before the date set for the submission of the security to the judge. The cost of serving notices required under this section may be taxed as costs in the action.
3. Where applicable, the provisions of section 36-11-07 may be raised as an affirmative defense in any proceedings under this section, and the owner or person entitled to possession of ~~such~~ the livestock may apply to a court of competent jurisdiction for the return of the livestock. If the court finds that the livestock ~~have~~ has been wrongfully distrained, the person who causes the livestock to be wrongfully distrained is liable for all damages suffered by the owner or person entitled to possession of the livestock, together with the costs of the action and reasonable attorney's fees.

SECTION 6. AMENDMENT. Section 36-11-11 of the North Dakota Century Code is amended and reenacted as follows:

36-11-11. Procedure when security given. When security for the payment of damages and costs is approved by the district judge, the judge shall issue an order directed to the person holding the livestock to deliver the ~~stock~~ livestock to the person entitled ~~thereto~~ to the livestock, and the officer receiving the order shall take the livestock and deliver it to the person. The cost of the proceedings may be charged as a part of the costs in the action to determine the rights of the parties regarding the livestock distrained for the trespass.

SECTION 7. AMENDMENT. Section 36-11-12 of the North Dakota Century Code is amended and reenacted as follows:

36-11-12. Notice of damages to owner of animal livestock before action is commenced. Before commencing any action for damages caused by the trespass of any livestock, the ~~party~~ person sustaining ~~such~~ the damages, if ~~he~~ the person knows to whom ~~such~~ the livestock belongs and the owner is a resident of, and is present in, the county in which the trespass occurred, shall notify ~~such~~ the owner, or the person having the ~~animals~~ livestock in charge, of ~~such~~ the nature and extent of the damage and the probable amount thereof.

SECTION 8. AMENDMENT. Section 36-11-13 of the North Dakota Century Code is amended and reenacted as follows:

36-11-13. When action for trespass of livestock must be commenced. A party claiming ~~damages~~ damage for trespass of livestock under ~~the provisions~~ of this chapter shall bring an action to recover the same within:

1. Sixty days after the infliction of ~~such damages~~ the damage if the offending ~~animals~~ livestock have been distrained by the person who has been damaged and a lien is sought to be impressed upon ~~such animals~~ livestock for the amount of ~~such~~ the damages.
2. Six years after the infliction of ~~such damages~~ the damage if the offending ~~animals~~ livestock have not been distrained by the person who has been damaged and no lien is sought to be impressed upon ~~such animals~~ the livestock for the amount of ~~such~~ the damages.

SECTION 9. AMENDMENT. Section 36-11-14 of the North Dakota Century Code is amended and reenacted as follows:

36-11-14. Procedure when keeper or owner of trespassing animals livestock is unknown. If the person suffering damage because of the trespass of livestock which has been taken up under ~~the provisions of~~ this chapter does not know the name of the owner or keeper ~~thereof, he~~ of the livestock, the person may bring an action against a ~~defendant an~~ unknown defendant. In such case, service must be made by publication of a copy of the summons, with a notice ~~annexed thereto~~ attached, stating the nature of the action, in at least one issue of a legal newspaper if one is published within the county, and if not, by posting copies of the summons and notice in three public places within the county. ~~Such~~ The publication or posting, ~~as the case may be,~~ must be made ~~not less than~~ at least ten days before the date of the trial. If it appears on the trial of any action brought to recover damages arising from the trespass of livestock that the person named in ~~such~~ the action and upon whom the summons ~~therein~~ was served is not the owner or person in charge of the offending ~~animals~~ livestock, the action must be dismissed as to ~~him~~ that person, and service must be made, and the action must proceed, as in a case in which the name of the owner or keeper of the offending ~~animals~~ livestock is unknown.

SECTION 10. AMENDMENT. Section 36-11-15 of the North Dakota Century Code is amended and reenacted as follows:

36-11-15. Proof on trial of action for trespass of livestock. Upon the trial of an action brought under ~~the provisions of~~ this chapter, the plaintiff shall prove:

1. The amount of ~~damages~~ damage sustained by ~~him~~ the plaintiff by reason of the trespass; and
2. If ~~he~~ the plaintiff has distrained the ~~animals~~ livestock committing the trespass, the amount of expense incurred in distraining and keeping the ~~same~~ livestock.

SECTION 11. AMENDMENT. Section 36-11-16 of the North Dakota Century Code is amended and reenacted as follows:

36-11-16. Judgment for plaintiff is lien on offending animals livestock. Any judgment rendered for damages against the defendant in an action brought under ~~the provisions of~~ this chapter is a lien upon the ~~animals~~ livestock committing the trespass if ~~such animals~~ the livestock were distrained by the plaintiff, and ~~such animals~~ the livestock may be sold as in other cases of sale of personal property on execution, and the proceeds of the sale applied to the satisfaction of the judgment, and the ~~animals~~ livestock are not exempt from seizure and sale upon ~~such~~ execution.

SECTION 12. AMENDMENT. Section 36-11-17 of the North Dakota Century Code is amended and reenacted as follows:

36-11-17. Collection of judgment against unknown defendant - Disposition of surplus. After a judgment has been rendered against an unknown defendant as provided in section 36-11-14, the ~~offending animals~~ livestock, or so many of them as may be necessary, must be sold in the same manner as personal property is sold upon execution. Any surplus remaining from ~~such~~ the sale after the judgment and the costs in the action have been paid must be paid to the county treasurer for the benefit of the owner ~~thereof~~, and if the owner does not appear and

claim the same surplus within six months ~~thereafter~~, it must be paid into the ~~school common schools trust fund~~ for the use of the public schools ~~of the county~~.

SECTION 13. AMENDMENT. Section 36-11-18 of the North Dakota Century Code is amended and reenacted as follows:

36-11-18. When judgment of original court final - Right to trial by jury. In all actions brought under ~~the provisions of~~ this chapter, if the amount of damages claimed does not exceed twenty-five dollars, the judgment of the court having original jurisdiction is final. Either party to ~~such~~ the action may have a jury trial upon a demand ~~therefor~~.

SECTION 14. AMENDMENT. Section 36-11-19 of the North Dakota Century Code is amended and reenacted as follows:

36-11-19. Taking animals livestock distrained - Penalty. Every person who, except by due course of law, takes, ~~or~~ ~~advises,~~ or assists in the taking of, any ~~animal~~ livestock distrained and held by virtue of ~~any provision of~~ this chapter, from the possession of the person having the ~~same in his charge~~ livestock, without the consent of the person holding ~~such animal~~ the livestock, is guilty of a class B misdemeanor.

SECTION 15. AMENDMENT. Section 36-11-20 of the North Dakota Century Code is amended and reenacted as follows:

36-11-20. Sheriff to return or impound livestock running at large - Expenses to be paid by owner. In the event of ~~any~~ a complaint by anyone suffering injury or damages or likely to suffer injury or damages as a result of livestock running at large contrary to ~~the provisions of~~ section 36-11-01, the sheriff of the county ~~wherein such in which the~~ livestock may be found shall return the livestock to the owner or impound the livestock and dispose of them as ~~stray animals~~ estrays under ~~the procedure set forth in~~ chapter 36-13. The expenses incurred by the sheriff or ~~his~~ the sheriff's agents in performing the duties required ~~of him~~ in this section must be paid by the owner of the livestock. If the owner cannot be found the sheriff's expense must be recovered from proceeds remaining after the disposal of ~~such animals~~ the livestock as estrays.

SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 289

SENATE BILL NO. 2201

(Senators Klein, Erbele, Nichols)
(Representatives DeKrey, Froelich)

BRUCELLOSIS VACCINATION

AN ACT to create and enact a new section to chapter 36-15 of the North Dakota Century Code, relating to waivers of requirements for calfhood vaccination against brucellosis; and to amend and reenact section 36-15-21 of the North Dakota Century Code, relating to requirements for calfhood vaccination against brucellosis.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-15-21 of the North Dakota Century Code is amended and reenacted as follows:

36-15-21. Calfhood vaccination against brucellosis required - Penalty.

1. ~~No~~ A person may not bring into this state or receive from outside this state any female cattle over the maximum vaccination age as prescribed in the brucellosis eradication uniform methods and rules approved and published by the United States department of agriculture, agriculture's animal and plant health inspection service, that have not been unless the cattle have been officially calfhood vaccinated against brucellosis. Female or a waiver has been granted by the board in accordance with section 2 of this Act. This subsection does not apply if the cattle originating originate from a free states that do state, a United States possession, or a Canadian province or territory, which does not require place requirements on North Dakota-origin female cattle to be regarding calfhood brucellosis vaccinated are exempt from the requirements of this section vaccinations or brucellosis testing before entry.
2. A person who brings female cattle into this state from ~~either a reciprocating free states that reciprocate state, United States possession, or Canadian province or territory~~ shall prove that the cattle were located in that state, possession, province, or territory for a period of at least sixty days. ~~"Officially calfhood vaccinated"~~
3. For purposes of this section, "officially calfhood vaccinated" means a bovine female animal bovine vaccinated against brucellosis under the supervision of a federal or state veterinary official or an accredited veterinarian within age limits prescribed by the board in compliance with as prescribed in the brucellosis eradication uniform methods and rules approved by the United States department of agriculture uniform methods and rules, with a vaccine approved by the North Dakota state veterinarian, and permanently identified as such a vaccinee and reported at the time of vaccination to the appropriate state or federal agency cooperating in the eradication of brucellosis. However, the board may grant an exception to the provisions of this section. An appeal may be taken from the decision of the board under the provisions of chapter 28-32. Any person who brings into this state, or

~~acquires within this state, any cattle contrary to the provisions of this section agriculture's animal and plant health inspection service.~~

4. In addition to other penalties provided in this chapter, a person who violates this section is guilty of a class A misdemeanor.

SECTION 2. A new section to chapter 36-15 of the North Dakota Century Code is created and enacted as follows:

Calfhood vaccination against brucellosis - Waiver of requirements.

1. The board may waive the requirement set forth in section 36-15-21 if the person requesting the waiver obtains a form from the state veterinarian and submits the completed form to the board.
2. As a condition of granting the waiver, the board may require disease testing, vaccination, quarantine, and reporting, as well as any other actions the board determines necessary to protect the health and safety of domestic animals or nontraditional livestock.
3. If the board does not grant the application for waiver within one hundred twenty days from the date the application is received by the board, the application is deemed denied.
4. Any person aggrieved by a decision of the board has the right to receive an administrative hearing if the person files a written request for a hearing with the board within ten days from the date on which the board's determination regarding the waiver is received by the applicant or, if no response is received by the applicant, within ten days from the date the application is deemed denied under this section.

Approved April 4, 2003
Filed April 4, 2003

CHAPTER 290**HOUSE BILL NO. 1192**

(Representatives Metcalf, Froelich, D. Johnson, Nelson)
(Senators Flakoll, Lindaas)

LIVE ANIMAL RAFFLE PRIZE VALUATION

AN ACT to amend and reenact subsection 2 of section 36-21.1-09 of the North Dakota Century Code, relating to the valuation of live animal raffle prizes; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 36-21.1-09 of the North Dakota Century Code is amended and reenacted as follows:

2. An eligible organization authorized to conduct games of chance under chapter 53-06.1 may raffle live beef or dairy cattle, bison, sheep, horses, and pigs, provided each raffle ticket contains a statement that the winner of person who wins the animal may convert that prize to a cash prize. The donor of the animal shall determine the amount market value of the cash prize, which animal. If the person who wins the animal desires a cash prize instead of the animal, the organization shall pay the player a cash prize that must be equivalent to equal the lesser of the market value of the animal and cannot exceed the limitations of or the maximum single cash prize amount allowed under section 53-06.1-10.1.

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

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 291

SENATE BILL NO. 2220

(Senators Erbele, Christmann, Seymour)
(Representatives Froseth, F. Klein, Onstad)

POULTRY INSPECTIONS

AN ACT to amend and reenact sections 36-24-01 and 36-24-10 of the North Dakota Century Code, relating to poultry inspections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-24-01 of the North Dakota Century Code is amended and reenacted as follows:

36-24-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Adulterated" means a whole carcass, part of a carcass, or meat food product:
 - a. That bears or contains a poisonous or harmful substance that may render it injurious to health;
 - b. That bears or contains a chemical pesticide that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - c. That bears or contains a food or color additive that is unsafe under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - d. That contains a filthy, putrid, or decomposed substance or is for any other reason unfit for human food;
 - e. That has been prepared, packed, or held under unsanitary conditions;
 - f. That is wholly or partly the product of an animal that has died in a manner other than slaughter;
 - g. The container of which is wholly or partly composed of a poisonous or harmful substance that may make the contents harmful to health;
 - h. That has been intentionally subjected to radiation, unless the use of the radiation conformed with a regulation or exemption in effect under the federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - i. That is damaged or inferior and that damage or inferiority has been concealed; or

- j. That has had a substance added to it or mixed or packed with it so as to increase its bulk or weight, or make it appear better than or of greater value than it is.
2. "Animal" includes cattle, swine, sheep, goats, farmed cervidae, llama, ~~ratite~~, horses, equines, ~~and~~ other large domesticated animals, ~~not including and~~ poultry.
 3. "Commissioner" means the agriculture commissioner.
 4. "Container" includes a can, pot, tin, canvas, or other receptacle containing a meat food product.
 5. "Custom processing" means slaughtering, eviscerating, dressing, or processing an animal or processing meat products for the owner of the animal or of the meat products, if all meat products derived from the custom operation are returned to the owner of the animal or of the meat products.
 6. "Intrastate commerce" means commerce within this state.
 7. "Meat food product" means a product usable as human food and made wholly or in part from meat or a portion of an animal carcass. The term does not include any product that contains meat or other portions of the carcasses of animals in a relatively small proportion or which historically have not been considered by consumers as a product of the meat food industry, and which is not represented as a meat food product.
 8. "Poultry" includes domesticated chickens, ducks, geese, pheasants, quail, ratites, and turkeys.
 9. "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

¹³⁰ **SECTION 2. AMENDMENT.** Section 36-24-10 of the North Dakota Century Code is amended and reenacted as follows:

36-24-10. Individual and custom processing.

1. This chapter does not apply to an individual processing the individual's own animals and the individual's preparation and transportation in intrastate commerce of the whole carcasses, parts of carcasses, and meat food products provided the animals are for the exclusive use of the individual, members of the individual's household, the individual's nonpaying guests, and employees.
2. This chapter does not apply to the custom processing by a person of animals delivered by the owner for processing, and the preparation or transportation in intrastate commerce of the whole carcasses, parts of carcasses, and meat food products of the animals, provided that the

¹³⁰ Section 36-24-10 was also amended by section 1 of House Bill No. 1130, chapter 292.

products are to be used exclusively in the household of the animal's owner by the owner and members of the owner's household, nonpaying guests, and employees.

3. A custom processor may not engage in the business of buying or selling whole carcasses, parts of carcasses, or meat food products of animals, other than poultry, usable as human food unless the whole carcasses, parts of carcasses, or meat food products have been inspected and passed and are identified as inspected and passed by the commissioner or the United States department of agriculture.
4. The provisions of this chapter requiring inspection of the preparation of poultry carcasses and parts thereof, and poultry food products at establishments conducting those operations do not apply to any retailer with respect to poultry products sold in commerce directly to consumers in an individual retail store, provided that the retailer does not engage in the business of custom slaughter, and provided that the poultry products sold in commerce are derived from poultry inspected and passed by the commissioner or the United States department of agriculture.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 292

HOUSE BILL NO. 1130

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

CUSTOM MEAT PROCESSING

AN ACT to amend and reenact section 36-24-10 of the North Dakota Century Code, relating to custom processing of meat products; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³¹ **SECTION 1. AMENDMENT.** Section 36-24-10 of the North Dakota Century Code is amended and reenacted as follows:

36-24-10. Individual and custom processing - Exemption from inspection requirements.

1. This chapter does not apply to an individual processing the individual's own animals and the individual's preparation and transportation in intrastate commerce of the whole carcasses, parts of carcasses, and meat food products provided the animals are for the exclusive use of the individual, members of the individual's household, the individual's nonpaying guests, and employees.
2. ~~This chapter does not apply to~~ The provisions of this chapter requiring inspection of the slaughter of animals, the preparation of the carcasses and parts thereof, and meat and meat food products at establishments conducting such operations do not apply to the custom processing by a person of animals delivered by the owner for processing, and the preparation or transportation in intrastate commerce of the whole carcasses, parts of carcasses, and meat food products of the animals, provided that the products are to be used exclusively in the household of the animal's owner by the owner and members of the owner's household, nonpaying guests, and employees.
3. A custom processor may not engage in the business of buying or selling whole carcasses, parts of carcasses, or meat food products of animals usable as human food unless the whole carcasses, parts of carcasses, or meat food products have been inspected and passed and are identified as inspected and passed by the commissioner or the United States department of agriculture.

¹³¹ Section 36-24-10 was also amended by section 2 of Senate Bill No. 2220, chapter 291.

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

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 293

SENATE BILL NO. 2198

(Senators Erbele, Christmann, Klein)
(Representatives Drovdal, D. Johnson, Solberg)

FARMED ELK INSPECTION CERTIFICATES

AN ACT to amend and reenact sections 36-14-04.1, 36-25-01, and 36-25-10 of the North Dakota Century Code, relating to certificates of veterinary inspection and farmed elk; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 36-14-04.1 of the North Dakota Century Code is amended and reenacted as follows:

36-14-04.1. Animals imported into state to have certificate of veterinary inspection - Exception.

1. Except as otherwise provided by this chapter or by rule, all domestic animals and nontraditional livestock brought into this state must be accompanied by a certificate of veterinary inspection certifying that the animals are free from symptoms of all contagious and infectious diseases, and that the animals meet disease testing and vaccination requirements prescribed by rule. Animals originating in other countries must be tested for diseases, as determined by the board, until a risk assessment is completed for the disease. If the board determines that an unacceptable risk exists, the board may deny entry, require additional testing, or require a vaccination.
2. The requirement for a certificate of veterinary inspection is waived for cattle, sheep, ~~or bison,~~ and swine originating directly from a producer's premises and not diverted en route, if the waiver is approved by the state veterinarian and the cattle, sheep, bison, or swine are delivered for sale directly to a licensed auction market or other premises approved by the state veterinarian.
3. The board may require certification indicating that animals entering this state from a foreign country and intended for human consumption have not been treated with drugs that are disallowed under federal law for use in animals intended for human consumption.
4. The board may adopt rules to implement this section.

SECTION 2. AMENDMENT. Section 36-25-01 of the North Dakota Century Code is amended and reenacted as follows:

36-25-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Board" means the state board of animal health.
2. "Commissioner" means the agriculture commissioner.

3. "Farmed elk" means mammals of the elk family (*cervus elaphus*), except red deer, confined in a manmade enclosure designed to prevent escape and:
 - a. Raised for fiber, meat, or animal byproducts; ~~or~~
 - b. Raised for breeding, exhibition, or harvest; or
 - c. Maintained for any other purpose.
4. "Owner" means a person who owns or is responsible for the raising of farmed elk.

SECTION 3. AMENDMENT. Section 36-25-10 of the North Dakota Century Code is amended and reenacted as follows:

36-25-10. Enforcement orders - Administrative hearing - Penalty.

1. The board may order any elk brought into this state in violation of this chapter or rules adopted by the board to be returned to the state of origin or to be slaughtered. The owner of the elk has the right to an administrative hearing on an order of the board in the manner provided in chapter 28-32 if the owner makes a written request for a hearing to the board within ten days after service of the order. If the owner does not request a hearing and if the owner fails to comply with the order, the state veterinarian shall carry out the order. The owner is liable to the board for all costs, including disease testing, incurred in carrying out the order.
2. If the board finds that a person has brought elk into this state, kept elk, or received elk in violation of this chapter or rules adopted by the board, the board may assess that person a civil penalty in an amount up to five thousand dollars per violation. Any person aggrieved by a decision of the board may appeal the decision as provided in chapter 28-32. The civil penalty assessed under this subsection must be in addition to any costs incurred by the board for enforcement of the order.
3. Any person who knowingly violates this chapter or any rule of the board is guilty of ~~a class A misdemeanor~~ an infraction.

Approved April 4, 2003
Filed April 4, 2003

MILITARY

CHAPTER 294

SENATE BILL NO. 2420

(Senator Cook)

(Approved by the Delayed Bills Committee)

NATIONAL GUARD AND MILITIA REFERENCES CHANGES

AN ACT to amend and reenact sections 37-01-01, 37-02-01, 37-02-02, and 37-08-01 of the North Dakota Century Code, relating to the militia.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-01-01 of the North Dakota Century Code is amended and reenacted as follows:

37-01-01. Definitions. In this title, unless the context or subject matter otherwise requires:

1. "Active militia" ~~consists of~~ means the organized and uniformed military forces of this state, ~~which must be~~ known as the "North Dakota national guard" and the reserve militia when called to active service.
2. "Active service" means ~~service on behalf of the state~~ active duty in case of public disaster, riot, tumult, breach of the peace, resistance of process, or the threat thereof, whenever called in aid of civil authorities, or under martial law, or at encampments, whether ordered by state or federal authorities, and includes the performance of any other duty requiring the entire time of the organization or person, except when called or drafted into the federal service by the president of the United States. ~~Such~~ The term includes service in case of, or to prevent, insurrection, riot, or invasion under the order of the commander in chief communicated through proper military channels.
3. ~~"Battalion" includes a "squadron" of cavalry, and of the air service as well as a battalion of infantry, artillery, engineers, and signal corps.~~
4. ~~"Company" includes a company of infantry, engineers, and signal corps, an air unit, a battery of field artillery, a troop of cavalry, or any similar organization in any branch of the military service authorized by federal law for this state, including a permanent detachment.~~
5. ~~"Defense department" includes the department of army and the department of air force.~~
6. ~~"In service of the United States" and "not in the service of the United States" have the same meaning as such terms have as used in the~~

National Defense Act [Pub. L. 64-85; 39 Stat. 166], approved June 3, 1916, and in amendments thereto.

7. "Militia" means the forces provided for in the Constitution of North Dakota, and is divided into two classes designated as the active militia and the reserve militia.
8. "Military forces of this state" ~~consists of~~ means those persons subject to military duty individuals in the active militia as defined in the Constitution of North Dakota and those persons subject to duty in the national guard as defined in the National Defense Act of the United States of America.
4. "Militia" means a group of individuals defined in the Constitution of North Dakota.
9. 5. "National guard" means that part of the military ~~force~~ forces of this state which is organized, equipped, and federally recognized under the provisions of the National Defense Act, as amended, of the United States as the "national guard, air national guard, of the United States and the state of North Dakota". ~~‡~~ The term includes also the term "national guard of the state of North Dakota".
10. 6. "On duty" includes periods of drill and of such other training and service as may be required under state or federal law, regulation, or order.
14. 7. "Reserve militia" consists of all those ~~persons~~ individuals who are subject to service in the active militia, ~~but~~ and who are not serving in the national guard of this state.
8. "State active duty" means active service on behalf of the state under authority of the governor at the expense of the state.
9. "State defense force" means the group of individuals in the reserve militia in state active duty under chapter 37-12.1.

SECTION 2. AMENDMENT. Section 37-02-01 of the North Dakota Century Code is amended and reenacted as follows:

37-02-01. Militia - How constituted - Exceptions. All able-bodied male citizens, and all able-bodied ~~persons~~ males of foreign birth who have declared ~~their~~ an intention to become citizens, who are ~~more than~~ between the ages of eighteen, and ~~less than~~ and forty-five, years of ~~age~~, and who are residents of this state, and other volunteers allowed by law constitute the militia, unless exempted by the laws of the United States, or by the laws of this state.

SECTION 3. AMENDMENT. Section 37-02-02 of the North Dakota Century Code is amended and reenacted as follows:

37-02-02. North Dakota national guard - Composition. The North Dakota national guard consists of ~~the~~ regularly enlisted and enrolled ~~male citizens,~~ members within the age limits prescribed by ~~the National Defense Act of 1920,~~ as it may be amended federal law; organized, armed, and equipped as provided in this title, and of commissioned officers within the ages conforming to the rules and regulations promulgated by the department of the army and department of the air force as conditions precedent to federal recognition. ~~The governor may authorize the~~

appointment or enlistment of female citizens of the state in the medical corps, nurses corps, and other noncombatant branches and service of the national guard, and while so serving, they have the same status as male members of the national guard. Such national guard must be composed of such units as the defense department of the United States may allocate and designate, with the approval of the governor of this state.

SECTION 4. AMENDMENT. Section 37-08-01 of the North Dakota Century Code is amended and reenacted as follows:

37-08-01. National guard reserve - Organization. The national guard reserve is all individuals who are subject to service in the national guard and are not serving in the national guard of this state. Subject to such the rules and regulations as of the president may prescribe, a national guard reserve must be maintained in this state which shall consist consists of such organizations, officers, and enlisted men members as the president may prescribe, or and members thereof of the reserve may be assigned as reserves to an active organization of the national guard.

Approved April 11, 2003

Filed April 14, 2003

CHAPTER 295

HOUSE BILL NO. 1227

(Representatives R. Kelsch, Aarsvold, Hunskor)
(Senators Freborg, O'Connell)

KOREAN VETERAN HIGH SCHOOL DIPLOMAS

AN ACT to amend and reenact section 37-01-42 of the North Dakota Century Code, relating to honorary high school diplomas for Korean conflict veterans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-01-42 of the North Dakota Century Code is amended and reenacted as follows:

37-01-42. Honorary high school diplomas - Veterans of World War II and Korean and Vietnam conflicts.

1. Any World War II veteran who did not receive a high school diploma may apply for an honorary high school diploma, provided:
 - a. The veteran entered the United States armed forces between September 16, 1940, and December 31, 1946, prior to completing the necessary high school graduation requirements; and
 - b. The veteran was honorably discharged from the United States armed forces.
2. Any Korean conflict veteran who did not receive a high school diploma may apply for an honorary high school diploma, provided:
 - a. The veteran was a member of the United States armed forces between June 25, 1950, and July 27, 1953; and
 - b. The veteran was honorably discharged from the United States armed forces.
3. Any Vietnam conflict veteran who did not receive a high school diploma may apply for an honorary high school diploma, provided:
 - a. The veteran entered the United States armed forces between February 28, 1961, and May 7, 1975; and
 - b. The veteran was honorably discharged from the United States armed forces.
4. In order to receive an honorary high school diploma, the veteran or a representative of the veteran shall complete an application on a form prescribed by the superintendent of public instruction. A county veterans' service officer shall certify the veteran's status as an honorably discharged veteran who served during the qualifying period to the superintendent of public instruction. The superintendent of public instruction shall forward the application to the school district in which the

veteran last attended school before induction. If the school district no longer exists, the application must be forwarded to the school district that has jurisdiction. If a school district decides not to issue a diploma under this program, the veteran may apply to the superintendent of public instruction for the diploma.

3. 5. The school district and the superintendent of public instruction shall review and either approve or deny each application received.
4. 6. If a veteran who would have qualified for a diploma under this section is deceased, a family member of the veteran may apply for and, if approved, be awarded the veteran's honorary high school diploma.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 296**HOUSE BILL NO. 1151**

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

MILITARY CIVIL RELIEF ACT

AN ACT to create and enact a new section to chapter 37-01 of the North Dakota Century Code, relating to rights of persons who are called into active state or federal military service; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-01 of the North Dakota Century Code is created and enacted as follows:

North Dakota military civil relief act. A person called or ordered to active service for thirty consecutive days or longer has all of the protections afforded to persons in the military service of the United States under the Soldiers and Sailors Civil Relief Act of 1940 [Pub. L. 102-12, 105 Stat. 34, 50 U.S.C. 501-548 and 560-593].

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

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 297

SENATE BILL NO. 2134

(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)

ADJUTANT GENERAL RANK AND APPOINTMENT

AN ACT to amend and reenact subdivision a of subsection 1 of section 37-02-06 and section 37-03-01 of the North Dakota Century Code, relating to the appointment of the adjutant general.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 1 of section 37-02-06 of the North Dakota Century Code is amended and reenacted as follows:

- a. The adjutant general ~~who~~ is the chief of staff and ~~must hold the rank of brigadier general. However, if an officer having a total of twenty years or more commissioned service in the armed forces, the adjutant general must hold the rank of major general holds a rank consistent with that individual's length of service and federal laws and regulations, but not to exceed the rank of lieutenant general.~~

SECTION 2. AMENDMENT. Section 37-03-01 of the North Dakota Century Code is amended and reenacted as follows:

37-03-01. Adjutant general - Appointment - Qualifications - Term - Salary - Office at capital - Removal. ~~The adjutant general must be appointed by the governor, and shall appoint the adjutant general. Each candidate for the office must have been a federally recognized commissioned officer of the national guard for a period of at least three years immediately preceding his the appointment. His, must have obtained the rank of lieutenant colonel or higher, and must have completed the educational requirements for appointment as a federally recognized general officer. The term of office is for six years and commences on July 1, 1944 2001, and on every sixth anniversary thereof. Any vacancy in such office may be filled by the governor, but an appointment to The governor shall fill a vacancy may be made only for the an unexpired term. The salary of the adjutant general must be within the appropriation for salaries by the legislative assembly. He shall The adjutant general must have his an office at the state capital. The provisions of chapter 37-04 relating to the vacation of commissions, retirement, and discharge apply to the adjutant general.~~

Approved March 20, 2003

Filed March 20, 2003

CHAPTER 298**SENATE BILL NO. 2132**
(Government and Veterans Affairs Committee)
(At the request of the Adjutant General)**NATIONAL GUARD ARMORY MAINTENANCE AND
REPAIR BOARD REPEAL**

AN ACT to repeal section 37-10-03.5 of the North Dakota Century Code, relating to the national guard armory maintenance and repair board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 37-10-03.5 of the North Dakota Century Code is repealed.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 299

SENATE BILL NO. 2344

(Senators Dever, Cook, Nelson)
(Representatives Amerman, Carlisle, M. Klein)

VETERANS

AN ACT to create and enact a new section to chapter 37-14 of the North Dakota Century Code, relating to the definition of veteran; and to amend and reenact sections 37-14-03.3, 37-14-04, 37-14-06, and 37-14-14 of the North Dakota Century Code, relating to references to veterans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 37-14 of the North Dakota Century Code is created and enacted as follows:

Definition of veteran. As used in this chapter, "veteran" means an individual who served in the armed forces of the United States on federal active duty for reasons other than training and who has been discharged under other than dishonorable conditions.

SECTION 2. AMENDMENT. Section 37-14-03.3 of the North Dakota Century Code is amended and reenacted as follows:

37-14-03.3. Revolving fund. The sum of seven hundred thousand dollars is a permanent revolving fund of the veterans' aid fund and may not revert to the general fund and must be used solely for the purpose of making loans to any veteran ~~as defined by section 37-01-40~~ and to a surviving spouse of a veteran if the spouse has not remarried. This section does not prohibit the department of veterans' affairs, in its discretion, from using any accrued interest ~~the fund accrues or has already earned or accrued~~ to collect loans if in the opinion of the department a person has the financial means to repay; and that person deliberately refuses to ~~do so~~ repay.

SECTION 3. 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 ~~as defined by section 37-01-40~~ and to a surviving spouse of a veteran if the spouse has not remarried. A qualified applicant may be permitted to ~~make~~ receive more than one loan providing the applicant has satisfied payment requirements of a previous loan.

SECTION 4. 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, ~~as defined by section 37-01-40~~, or the surviving spouse of a veteran and has not remarried, and that the applicant is a citizen and resident of this state, 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.

SECTION 5. AMENDMENT. Section 37-14-14 of the North Dakota Century Code is amended and reenacted as follows:

37-14-14. Veterans' postwar trust fund. The veterans' postwar trust fund ~~shall be~~ is a permanent trust fund of the state of North Dakota and ~~shall consist~~ consists of moneys transferred or credited to the fund, pursuant to ~~the provisions of~~ this chapter and ~~of~~ other laws. Investment of the fund ~~shall be~~ is the responsibility of the state treasurer who shall ~~have full authority to~~ invest the fund only in those legal investments authorized by section 21-10-07. All income received from investments is to be utilized only for programs of benefit and service to veterans ~~as defined in~~ section 37-01-40, or their dependents, and ~~such~~ all income is ~~hereby~~ appropriated to the administrative committee on veterans' affairs on a continuing basis for expenditure ~~upon such~~ on these programs as authorized by law.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 300

HOUSE BILL NO. 1117

(Appropriations Committee)

(At the request of the Department of Veterans Affairs)

VETERANS' AID FUND USE

AN ACT to amend and reenact section 37-14-03.3 of the North Dakota Century Code, relating to use of moneys in the permanent revolving fund of the veterans' aid fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-14-03.3 of the North Dakota Century Code is amended and reenacted as follows:

37-14-03.3. Revolving fund. ~~The sum of seven hundred thousand dollars is a permanent revolving fund of the veterans' aid fund and may not revert to the general fund and must be used solely for the purpose of~~ The moneys in the permanent revolving fund of the veterans' aid fund are available for:

1. ~~making~~ Making loans to any veteran as defined by section 37-01-40 and to a surviving spouse of a veteran if the spouse has not remarried; ~~This section does not prohibit the department of veterans' affairs, in its discretion, from using any interest the fund accrues or has already earned or accrued to;~~
2. ~~collect~~ Collecting loans if in the opinion of the department a person has the financial means to repay, and that person deliberately refuses to do so; and
3. Paying administrative expenses related to the making and collection of loans made from the fund.

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 301

SENATE BILL NO. 2299

(Senators Andrist, Lyson, Nichols)
(Representatives Metcalf, Warnke)

VETERANS' HOME ADMINISTRATOR AND ADMISSIONS

AN ACT to amend and reenact sections 37-15-07, 37-15-10.1, and 37-18.1-03 of the North Dakota Century Code, relating to the administrator of the veterans' home and priorities for admission to the veterans' home; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-15-07 of the North Dakota Century Code is amended and reenacted as follows:

37-15-07. ~~Commandant~~ Administrator of veterans' home - Appointment - Qualifications - ~~Term~~ - Salary. The appointment, qualifications, term of office, and salary of the ~~commandant~~ administrator of the veterans' home must be as prescribed in section 37-18.1-03.

SECTION 2. AMENDMENT. Section 37-15-10.1 of the North Dakota Century Code is amended and reenacted as follows:

37-15-10.1. Priorities for admission to veterans' home. If the veterans' home is full and a waiting list for admission is necessary, further admission to the veterans' home must be according to the following listing of priorities, so long as the individual meets the admission requirements of sections ~~37-15-02~~ and ~~37-15-10~~:

1. ~~Veterans with service-connected disability.~~
2. ~~American ex-prisoners of war.~~
3. ~~Wartime veterans with nonservice-connected disability.~~
4. ~~Wartime veterans.~~
5. ~~Discharged North Dakota national guard members who became disabled in the line and discharge of duty.~~
6. ~~Veterans with nonservice-connected disability.~~
7. ~~Veterans.~~
8. ~~Spouses.~~
9. ~~Surviving spouses.~~

An individual whose priority is higher than another individual's must be admitted before that other individual priorities for admission to the facility appropriate to the

different levels of care that are provided by the veterans' home. The priorities for admission must be established by rule as provided under chapter 28-32.

SECTION 3. AMENDMENT. Section 37-18.1-03 of the North Dakota Century Code is amended and reenacted as follows:

37-18.1-03. Powers and duties of committee - Creation of subcommittees subcommittee and governing board. The committee is responsible for organization, policy, and general administration of all veterans' affairs in the state of North Dakota. It has the following powers and duties:

1. The chairman and secretary of the committee, acting jointly, shall appoint ~~from the voting membership of the committee, two subcommittees:~~ a subcommittee to be responsible for supervision and government of the veterans' home, and a subcommittee to be responsible for supervision and government of the department of veterans' affairs. ~~Once appointed, a subcommittee member shall continue to serve as long as the member remains a voting member of the committee, unless removed from the subcommittee by the committee chairman and secretary, acting jointly. In no case may any one voting member serve on both subcommittees at the same time, and each nominating organization listed in section 37-18.1-01 must have at least one voting member nominated by it serving on each subcommittee. From the membership of each subcommittee, a chairman will be selected by majority vote to preside over it for the term of one year. No person may be permitted to serve as chairman of the committee and as chairman of a subcommittee simultaneously. A majority of the members of the subcommittee is required for a quorum, and a majority of the members present voting in favor thereof is required for any action~~ a seven-member governing board for administration of the veterans' home, from within or outside the committee, subject to ratification of a majority vote of the committee, and shall establish term lengths for service on the governing board. The governing board has all ordinary powers required of a governing board, including the power to establish qualifications for and selection of an administrator and to establish an appropriate salary structure, subject to limitations of legislative appropriation. The administrator serves at the pleasure of the governing board.
2. ~~The committee shall detail the specific powers and duties of each subcommittee relating to supervision, government, and implementation of programs or services provided by the veterans' home and the department of veterans' affairs~~ The chairman and secretary of the committee jointly shall appoint a subcommittee to be responsible for supervision and government of the department of veterans' affairs. Once appointed, a subcommittee member may continue to serve as long as the member remains a voting member of the committee, unless removed from the subcommittee by joint action of the committee chairman and secretary. A member of the subcommittee may not serve on the governing board of the veterans' home. Each nominating organization listed in section 37-18.1-01 must have at least one voting member nominated by the organization serving on the subcommittee. The subcommittee shall select by majority vote of the members a chairman to preside for the term of one year.

3. The committee shall appoint the ~~commandant of the veterans' home~~ and the commissioner of the department of veterans' affairs. ~~Individuals appointed to these positions~~ The commissioner must be a bona fide resident of the state, and must qualify as a veteran as defined in section 37-01-40. Their terms of office are for two years, commencing on July 1, 1971, and on every second anniversary thereof. ~~The commissioner serves at the pleasure of the committee.~~ The committee shall determine the ~~salaries~~ salary paid to the ~~commandant of the veterans' home~~ and the commissioner of the department of veterans' affairs within the limits of legislative appropriation. ~~The commandant of the veterans' home and the commissioner of veterans' affairs shall serve as the executive secretary for their respective subcommittees~~ the subcommittee. ~~The commandant and the commissioner have~~ has no vote in the affairs of the ~~subcommittees~~ subcommittee.
4. The committee shall, under recommendation from ~~each of its subcommittees~~ the board or the subcommittee, present any matters needing attention and action to the appropriate board, commission, agency, or department of the state, and the North Dakota veterans' coordinating council.
5. The committee shall assure compliance with applicable federal and state laws in the administration of both the department of veterans' affairs and the North Dakota veterans' home and shall exercise its responsibilities in all things necessary to carry out the provisions of this chapter in regard to organization, policy, and general administration of the agencies served and involved in the conduct of veterans' affairs. The board governing the veterans' home and the subcommittee governing the department of veterans' affairs shall conduct an annual performance evaluation of the administrator and commissioner, respectively, with the evaluation presented to the committee. The board and subcommittee shall create and implement a strategic plan for the veterans' home and the department of veterans' affairs, respectively. The board and the subcommittee annually shall report as to the status of the respective strategic plan to the committee. After receiving a report, the committee shall submit the report to the governor.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 302

HOUSE BILL NO. 1095

(Appropriations Committee)

(At the request of the Office of Management and Budget)

VETERANS' HOME APPROPRIATION EXPENDITURE

AN ACT to amend and reenact section 37-15-14 of the North Dakota Century Code, relating to veterans' home general fund appropriation 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 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. ~~Moneys derived from the~~ The general fund appropriation made by the legislative assembly must be transferred periodically to the veterans' home operating fund upon order 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 whenever the operating fund's balance requires supplementation.

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 303

HOUSE BILL NO. 1029

(Legislative Council)

(Budget Committee on Government Administration)

VETERANS' HOME MEMBERSHIP CONTRIBUTION

AN ACT to amend and reenact section 37-15-14.1 of the North Dakota Century Code, relating to the veterans' home membership contribution; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 37-15-14.1 of the North Dakota Century Code is amended and reenacted as follows:

37-15-14.1. Membership contribution for residents of veterans' home - ~~Creation of special~~ Special fund.

1. The administrative committee on veterans' affairs may establish a membership contribution to be paid by members of the veterans' home. The fee must be based on the adjusted income of each member, but ~~in no case~~ may it not exceed forty-nine percent of the average daily per-member cost. The membership contribution must be set under a formula determined by the administrative committee and designed to assure dignity and equity in the charge. The administrative committee may, ~~from time to time~~, reconsider its action establishing a membership contribution, amend or rescind the contribution charge, or reinstate a contribution charge previously rescinded. The commandant shall collect monthly any membership contribution levied.
2. As used in subsection 1, "adjusted income" means all moneys received from any source, including social security benefits, less amounts received or expended as follows:
 - ~~a. Moneys received as service-connected compensation.~~
 - ~~b.~~ Moneys earned during authorized leaves or furloughs from the veterans' home.
 - ~~c.~~ b. Moneys expended by the member for hospitalization due to illness or injury.
 - ~~d.~~ c. Moneys expended by the member for other medical care or treatment, or for required medicines.
 - ~~e.~~ d. Such other receipts or expenditures as the administrative committee may permit to be deducted in individual cases.
3. All moneys received as a result of charging the membership contribution authorized by subsection 1 must be deposited in the veterans' home operating fund.

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

Approved March 19, 2003

Filed March 19, 2003

MINING AND GAS AND OIL PRODUCTION

CHAPTER 304

HOUSE BILL NO. 1102

(Natural Resources Committee)
(At the request of the Geological Survey)

MINERAL EXPLORATION SECURITY

AN ACT to amend and reenact subdivision d of subsection 1 of section 38-08-04, subdivision a of subsection 1 of section 38-12-02, subdivision a of subsection 1 of section 38-12.1-04, and subdivision d of subsection 1 of section 38-19-03 of the North Dakota Century Code, relating to an election to deposit cash or property in lieu of a bond for coal exploration, subsurface mineral exploration and development, and geothermal production.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision d of subsection 1 of section 38-08-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules and orders of the industrial commission ~~prescribed to govern the production of oil and gas on public and private lands within the state~~, except that if the commission requires a bond to be furnished, the person required to furnish the bond may elect to deposit ~~cash or property~~ under such terms and conditions as the industrial commission may prescribe a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which an operator assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.

SECTION 2. AMENDMENT. Subdivision a of subsection 1 of section 38-12-02 of the North Dakota Century Code is amended and reenacted as follows:

- a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and ~~regulations~~ orders of the commission prescribed to govern the exploration, development, and production of subsurface minerals on state and private lands within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.

SECTION 3. AMENDMENT. Subdivision a of subsection 1 of section 38-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

- a. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with the provisions of this chapter, and the rules and ~~regulations~~ orders of the commission prescribed to govern the exploration for coal on state and private lands and roads used in coal exploration within the state of North Dakota. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.

SECTION 4. AMENDMENT. Subdivision d of subsection 1 of section 38-19-03 of the North Dakota Century Code is amended and reenacted as follows:

- d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter and the rules and orders of the commission relating to the extraction of geothermal energy. The person required to furnish the bond may elect to deposit a collateral bond, self-bond, cash, or any alternative form of security approved by the commission, or combination thereof, by which a permittee assures faithful performance of all requirements of this chapter and the rules and orders of the industrial commission.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 305

SENATE BILL NO. 2125

(Natural Resources Committee)
(At the request of the Industrial Commission)

CONFISCATION OF WELL EQUIPMENT AND OIL

AN ACT to amend and reenact subsections 1 and 2 of section 38-08-04.5 and section 38-08-04.9 of the North Dakota Century Code, relating to confiscation by the state of well-site equipment and salable oil; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 38-08-04.5 of the North Dakota Century Code are amended and reenacted as follows:

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 ~~the provisions of~~ section 38-08-04.9.
 - h. 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.

SECTION 2. AMENDMENT. Section 38-08-04.9 of the North Dakota Century Code is amended and reenacted as follows:

38-08-04.9. Confiscation of equipment and salable oil to cover plugging costs. ~~If the commission, its agents, employees, or contractors plugs, replugs a well, or restores a well site pursuant to sections 38-08-04.4, 38-08-04.5, 38-08-04.7, 38-08-04.8, 38-08-04.9 and 38-08-04.10, the commission, after notice and hearing, may order the confiscation of any production-related equipment at the abandoned well site owned by the operator or any working interest owner for the purpose of wholly or partially compensating the state for the cost of plugging or replugging or site restoration. When the commission intends to exercise or has exercised its right to plug a well or reclaim a well site, the commission, as compensation for its costs, may confiscate any production-related equipment and salable oil at the well site. The equipment subject to confiscation is limited to that owned by the well's operator, former operator, or working interest owner. If the commission exercises its authority under this section and there is salable oil at the well, that oil must be confiscated. The commission shall pay the mineral owners the royalty interest in the oil confiscated. In determining the mineral owners and their royalty interests, the commission may rely upon the most recent division order it is able to obtain. If one is unavailable or the commission finds the order unreliable, the commission may rely upon any other source of information the commission deems reasonable to determine and pay mineral owners. A confiscation must be by an order of the commission after notice and hearing. A confiscation order transfers title to the commission.~~

Approved March 12, 2003

Filed March 13, 2003

CHAPTER 306

HOUSE BILL NO. 1218

(Representatives Skarphol, Grande, Rennerfeldt, Wald)
(Senators Lyson, Wardner)

NONPARTICIPATING OWNER RISK PENALTY

AN ACT to amend and reenact subsection 3 of section 38-08-08 and subsection 3 of section 38-08-09.4 of the North Dakota Century Code, relating to carrying or otherwise financing nonparticipating owners in the development of oil and gas interests in spacing units and plans of unitization.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 38-08-08 of the North Dakota Century Code is amended and reenacted as follows:

3. In addition to any costs and charges recoverable under subsections 1 and 2, if a ~~lessee owning the owner of~~ an interest in a spacing unit elects not to participate in the risk and cost of drilling a well thereon, the owner paying for the nonparticipating ~~lessee's~~ owner's share of the drilling and operation of a well may recover from the nonparticipating ~~lessee~~ owner a risk penalty for the risk involved in drilling the well. The recovery of a risk penalty is as follows:
 - a. If the nonparticipating owner's interest in the spacing unit is derived from a lease or other contract for development, the risk penalty is ~~one~~ two hundred percent of the nonparticipating ~~lessee's~~ owner's share of the reasonable actual costs of drilling and completing the well and may be recovered out of, and only out of, production from the pooled spacing unit, as provided by section 38-08-10, exclusive of any royalty or overriding royalty. ~~No risk penalty may be assessed against an unleased mineral interest.~~
 - b. If the nonparticipating owner's interest in the spacing unit is not subject to a lease or other contract for development, the risk penalty is fifty percent of the nonparticipating owner's share of the reasonable actual costs of drilling and completing the well and may be recovered out of production from the pooled spacing unit, as provided by section 38-08-10, exclusive of any royalty provided for in subsection 1.
 - c. The owner paying for the nonparticipating owner's share of the drilling and operation of a well may recover from the nonparticipating owner a risk penalty for the risk involved in drilling and completing the well only if the paying owner has made an unsuccessful, good-faith attempt to have the unleased nonparticipating owner execute a lease or to have the leased nonparticipating owner join in and participate in the risk and cost of drilling the well. Before a risk penalty may be imposed, the paying owner must notify the nonparticipating owner with proof of service that the paying owner intends to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either

responding in opposition to the petition for a risk penalty or if no such petition has been filed, by filing an application or request for hearing with the industrial commission.

SECTION 2. AMENDMENT. Subsection 3 of section 38-08-09.4 of the North Dakota Century Code is amended and reenacted as follows:

3. The manner in which the unit and the further development and operation of the unit area shall or may be financed and the basis, terms, and conditions on which the cost and expense thereof shall be apportioned among and assessed against the tracts and interests made chargeable therewith, including a detailed accounting procedure governing all charges and credits incident to such operations. Upon and subject to such terms and conditions as to time and legal rate of interest as may be fair to all concerned, reasonable provision must be made in the plan of unitization for carrying or otherwise financing ~~lessees~~ owners who are unable to promptly meet their financial obligations in connection with the unit and, in addition to the unit expense assessed against each tract and chargeable to each owner, the recovery of a risk penalty from each owner electing not to participate in the unit expense. The recovery of the risk penalty is as follows:
 - a. If the nonparticipating owner's interest in the unit is derived from a lease or other contract for development, the risk penalty is two hundred percent of the nonparticipating owner's share of the unit expense and may be recovered out of, and only out of, production from the unit, exclusive of any royalty or overriding royalty.
 - b. If the nonparticipating owner's interest in the unit is not subject to a lease or other contract for development, the penalty is fifty percent of the nonparticipating owner's share of the unit expense and may be recovered out of production from the unit exclusive of any royalty provided for in section 38-08-09.13.
 - c. The owner paying for the nonparticipating owner's share of the unit expense may recover from the nonparticipating owner a risk penalty for the risk involved in the unit expense only if the paying owner has made an unsuccessful, good-faith attempt to have the unleased nonparticipating owner execute a lease or to have the leased nonparticipating owner join in and participate in the risk of the unit expense. Before a risk penalty may be imposed, the paying owner must notify the nonparticipating owner with proof of service that the paying owner intends to impose a risk penalty and that the nonparticipating owner may object to the risk penalty by either responding in opposition to the petition for a risk penalty or if no such petition has been filed, by filing an application or request for hearing with the industrial commission.

Approved April 23, 2003

Filed April 23, 2003

MOTOR VEHICLES

CHAPTER 307

SENATE BILL NO. 2213

(Senators Espegard, Heitkamp)
(Representatives Delmore, Weisz)

MOTOR VEHICLE DEFINITIONS AND WIDTH RESTRICTIONS

AN ACT to create and enact three new subsections to section 39-01-01 and a new subsection to section 39-12-04 of the North Dakota Century Code, relating to definitions of motor vehicles and the width of motor vehicles; and to amend and reenact subsections 25 and 84 of section 39-01-01 of the North Dakota Century Code, relating to the definitions of house car and travel trailer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³² **SECTION 1.** Three new subsections to section 39-01-01 of the North Dakota Century Code are created and enacted as follows:

"Camping trailer" means a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

"Fifth-wheel travel trailer" means a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

"Truck camper" means a portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use; consists of a roof, floor, and sides; and is designed to be loaded onto and unloaded from the bed of a pickup truck.

¹³³ **SECTION 2. AMENDMENT.** Subsections 25 and 84 of section 39-01-01 of the North Dakota Century Code are amended and reenacted as follows:

¹³² Section 39-01-01 was also amended by section 3 of Senate Bill No. 2150, chapter 322, and section 2 of Senate Bill No. 2213, chapter 307.

¹³³ Section 39-01-01 was also amended by section 1 of Senate Bill No. 2213, chapter 307, and section 3 of Senate Bill No. 2150, chapter 322.

25. "House car" or "motor home" means a motor vehicle which has been reconstructed or manufactured primarily for private use as a temporary or recreational dwelling and having at least four of the following permanently installed systems:
- a. Cooking facilities.
 - b. Icebox or mechanical refrigerator.
 - c. Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.
 - d. Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.
 - e. Heating or air-conditioning system, or both, separate from the vehicle engine or the vehicle engine electrical system.
 - f. A 110-115 volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.
84. "Travel trailer" means a ~~mobile home or housetrailer designed to be towed behind a motor vehicle for recreational purposes and providing temporary sleeping quarters for people~~ vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require a special highway movement permit when towed by a motorized vehicle.

¹³⁴ **SECTION 3.** A new subsection to section 39-12-04 of the North Dakota Century Code is created and enacted as follows:

Motor homes, house cars, travel trailers, fifth-wheel travel trailers, camping trailers, and truck campers may exceed eight feet six inches [2.59 meters] in width if the excess is attributable to an appurtenance that extends beyond the body of the vehicle no more than six inches [15.24 centimeters] on either side of the vehicle. For purposes of this subsection, the term appurtenance includes a shade awning and its support hardware, and any appendage that is intended to be an integral part of a motor home, house car, travel trailer, fifth-wheel travel trailer, camping trailer, or truck camper.

Approved March 19, 2003
Filed March 19, 2003

¹³⁴ Section 39-12-04 was also amended by section 1 of House Bill No. 1062, chapter 331, and section 2 of House Bill No. 1261, chapter 310.

CHAPTER 308

SENATE BILL NO. 2059

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

HIGHWAY PATROLMEN'S RETIREMENT SERVICE AND CONTRIBUTIONS

AN ACT to create and enact two new sections to chapter 39-03.1 of the North Dakota Century Code, relating to Internal Revenue Code compliance and employer service purchases under the highway patrolmen's retirement system; to amend and reenact section 39-03.1-08.2, subsection 2 of section 39-03.1-09, and sections 39-03.1-14.1 and 39-03.1-28 of the North Dakota Century Code, relating to the purchase of additional service credit, employer payment of employee contributions multiple plan membership, and confidentiality requirements under the highway patrolmen's retirement system; and to repeal section 39-03.1-11.1 of the North Dakota Century Code, relating to benefit limitations under the highway patrolmen's retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-03.1-08.2 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-08.2. (Contingent expiration date - See note) Purchase of additional service credit.

1. The fund may accept rollovers from other ~~qualified~~ eligible plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code [26 U.S.C. 408].
2. Except as provided in subsection 3 of section 39-03.1-10.1, a contributor is entitled to purchase additional credit under this section for active employment in the armed forces of the United States, for up to four years of credit, if the contributor is not presently receiving credit for that service. A contributor may not purchase credit under this subsection if the years claimed also qualify for retirement benefits from another retirement system.
3. A contributor may elect to purchase credit for an employer-approved leave of absence if the contributor is not presently receiving credit for that absence.
4. ~~A participating contributor who is a vested permanent employee is entitled to purchase additional years of service credit for purposes of subsection 4 of section 39-03.1-14 and to enable the contributor to qualify for the normal retirement date defined by subdivision b of subsection 3 of section 39-03.1-14. The board may accept trustee-to-trustee transfers as permitted by Internal Revenue Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue~~

Code section 403(b) annuity or Internal Revenue Code section 457 deferred compensation plan for the purchase of permissive service credit, as defined in Internal Revenue Code section 415(n)(3)(A), or as repayment of a cashout from a governmental plan under Internal Revenue Code section 415(k)(3).

5. The contributor may purchase credit under this section by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. The board shall adopt rules governing the purchase of additional credit under this section.
6. The board may establish individual retirement accounts and individual retirement annuities as permitted under section 408(q) of the Internal Revenue Code to allow employees to make voluntary employee contributions. The board may adopt appropriate rules as may be necessary to implement and administer the accounts and annuities under this section.
7. In addition to service credit identified in this section, a vested member may purchase up to five years of service credit.

(Contingent effective date - See note) Purchase of additional service credit.

1. The fund may accept rollovers from other ~~qualified~~ eligible plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code [26 U.S.C. 408].
2. Except as provided in subsection 3 of section 39-03.1-10.1, a contributor is entitled to purchase additional credit under this section for active employment in the armed forces of the United States, for up to four years of credit, if the contributor is not presently receiving credit for that service. A contributor may not purchase credit under this subsection if the years claimed also qualify for retirement benefits from another retirement system.
3. A contributor may elect to purchase credit for an employer-approved leave of absence if the contributor is not presently receiving credit for that absence.
4. ~~A participating contributor who is a vested permanent employee is entitled to purchase additional years of service credit for purposes of subsection 4 of section 39-03.1-14 and to enable the contributor to qualify for the normal retirement date defined by subdivision b of subsection 3 of section 39-03.1-14.~~ The board may accept trustee-to-trustee transfers as permitted by Internal Revenue Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue Code section 403(b) annuity or Internal Revenue Code section 457 deferred compensation plan for the purchase of permissive service credit, as defined in Internal Revenue Code section 415(n)(3)(A), or as repayment of a cashout from a governmental plan under Internal Revenue Code section 415(k)(3).

5. The contributor may purchase credit under this section by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. The board shall adopt rules governing the purchase of additional credit under this section.
6. The board may establish individual retirement accounts and individual retirement annuities as permitted under section 408(q) of the Internal Revenue Code to allow employees to make voluntary employee contributions. The board may adopt appropriate rules as may be necessary to implement and administer the accounts and annuities under this section.
7. In addition to service credit identified in this section, a member may purchase up to five years of service credit.
8. Pursuant to rules adopted by the board, the board may allow a member to purchase service credit with either pretax or aftertax moneys, at the board's discretion. If a member 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. Subsection 2 of section 39-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid ~~shall~~ must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state 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 state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

SECTION 3. A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

Employer service purchases. An employer may purchase additional service credit on behalf of a contributor under the following conditions:

1. The contributor may not be given the option to choose between an employer service purchase and an equivalent amount paid in cash.
2. The contributor must meet one of the following conditions at the time the purchase is made:
 - a. The contributor's age plus service credit must be equal to or greater than seventy; or
 - b. The contributor's age must be at least fifty and the contributor must have at least ten years of service credit.
3. The board must determine the purchase price on an actuarially equivalent basis.
4. The purchase must be completed before the contributor's retirement.
5. The employer may purchase a maximum of five years of service credit on behalf of the contributor.
6. The employer must pay the purchase price for the service credit purchased under this section in a lump sum.

SECTION 4. A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

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 as it applies for governmental plans.

SECTION 5. AMENDMENT. Section 39-03.1-14.1 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-14.1. Multiple plan membership - Eligibility for benefits - Amount of benefits.

1. ~~a.~~ For the purpose of determining eligibility for benefits under this chapter, a member's years of service is the total of the years of service earned under this chapter and the years of service employment or years of service credit earned in any number of the following, the total of which may not exceed twelve months of credit per year:
 - ~~(1)~~ a. The public employees retirement system.
 - ~~(2)~~ b. The teachers' fund for retirement.
 - c. The teachers' insurance and annuity association of America - college retirement equities fund (TIAA-CREF), for service credit earned while employed by North Dakota institutions of higher education.
- ~~b.~~ 2. If a member terminates eligible employment under this chapter, if that member has not received a refund of the member's accumulated deductions, and if that member begins eligible employment in a plan described in ~~paragraph 1~~ subdivision a or ~~2~~ b of ~~subdivision a~~

subsection 1, that member may elect to remain an inactive member of the system without refund of the member's accumulated deductions. The election must be made within ninety days after beginning the eligible employment ~~or by October 1, 1987, whichever is later~~. The board shall terminate the inactive status of a member under this subdivision if the member gains eligible employment under this chapter or if the member terminates eligible employment under a plan described in paragraph 4 subdivision a or 2 b of subdivision a subsection 1.

- e. 3. A Pursuant to rules adopted by the board, a member who has service credit in the system and in any number of the alternate plans described in paragraphs 4 and 2 subdivision a or b of subdivision a subsection 1 is entitled to benefits under this chapter;. The employee may elect to have benefits calculated by using the certified salaries of the retirement plan of last membership using the benefit formula in section 39-03.1-11 under either of the following calculation methods:
- a. By using the average of the highest salary received by the member for any consecutive thirty-six months employed during the last one hundred twenty months of employment in the highway patrolmen's retirement system. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.
 - b. Using the average of the highest salary received by the member for any thirty-six consecutive months during the last one hundred twenty months of employment, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

The board shall calculate benefits for an employee under this subsection by using only those years of service employment earned under this chapter.

- ~~2. Under rules adopted by the board, an individual whose service credit was canceled when that individual received a refund of assessments at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 4 or 2 of subdivision a of subsection 1, repurchase that service credit that was canceled.~~

SECTION 6. AMENDMENT. Section 39-03.1-28 of the North Dakota Century Code is amended and reenacted as follows:

39-03.1-28. Confidentiality of records. ~~Information pertaining to a contributor's accumulated deductions, disability applications and benefits, and surviving spouse applications and benefits under this chapter is confidential and is not a public record.~~ All records relating to the retirement benefits of a member or a beneficiary under this chapter are confidential and are not public records. The information and records may be disclosed, under rules adopted by the board only to:

1. A person to whom the ~~contributor~~ member has given written consent to have the information disclosed.
2. A person legally representing the ~~contributor~~ member, upon proper proof of representation, and unless the ~~contributor~~ member specifically withholds consent.

3. A person authorized by a court order.
4. A member's participating employer, limited to information concerning the member's years of service credit and years of age. The board may share other types of information as needed by the employer to validate the employer's compliance with existing state or federal laws. Any information provided to the member's participating employer under this subsection must remain confidential except as provided under subsection 6.
5. The administrative staff of the retirement and investment office for purposes relating to membership and benefits determination.
6. State or federal agencies for purposes of reporting on a service provider's provision of services or when the employer must supply information to an agency to validate the employer's compliance with existing state or federal laws.
7. Member interest groups approved by the board on a third-party blind list basis, limited to information concerning the member's participation, name, and address.
8. The member's spouse or former spouse, that individual's legal representative, and the judge presiding over the member's dissolution proceeding for purposes of aiding the parties in drafting a qualified domestic relations order under section 39-03.1-14.2. The information disclosed under this subsection must be limited to information necessary for drafting the order.
9. Beneficiaries designated by a participating member or a former participating member to receive benefits after the member's death, but only after the member's death.
10. Any person if the board determines disclosure is necessary for treatment, operational, or payment purposes, including the completion of necessary documents.

SECTION 7. REPEAL. Section 39-03.1-11.1 of the North Dakota Century Code is repealed.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 309**HOUSE BILL NO. 1299**

(Representatives Pollert, Delmore, D. Johnson)

(Senators Erbele, Klein, Taylor)

FFA FOUNDATION LICENSE PLATES

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to North Dakota FFA foundation number plates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-04 of the North Dakota Century Code is created and enacted as follows:

North Dakota FFA foundation number plates. The director shall design a decorative decal that contains the insignia of the North Dakota FFA foundation to be placed on a distinctive number plate. On payment of all other fees required under this chapter for registration of the motor vehicle and payment of an additional fee of ten dollars, the applicant is entitled to issuance of the decals and plates. However, the director may not issue the decals and 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].

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 310

HOUSE BILL NO. 1261 (Representatives Froelich, D. Johnson)

OVERSIZED VEHICLES ON HIGHWAYS

AN ACT to amend and reenact subdivision h of subsection 2 of section 39-04-18 and section 39-12-04 of the North Dakota Century Code, relating to the width of forage harvesters and the registration of nonresident harvest vehicles; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision h of subsection 2 of section 39-04-18 of the North Dakota Century Code is amended and reenacted as follows:

- h. Motor vehicles owned and operated by nonresidents engaged in harvest of agricultural products from ~~July fifteenth~~ June first through December thirty-first of any one year; provided, however, that such motor vehicles have displayed thereon a decal or other means of identification issued by the director upon payment of a fee of fifty dollars.

¹³⁵ **SECTION 2. AMENDMENT.** Section 39-12-04 of the North Dakota Century Code is amended and reenacted as follows:

39-12-04. Width, height, and length limitations on vehicles - Exceptions.

1. Vehicles operated on a highway in this state may not exceed ~~the following width, height, or length limitations:~~
- ~~4.~~ A a total outside width, including load thereon, of eight feet six inches [2.59 meters]. This limitation does not apply to:
 - a. Construction and building contractors' equipment and vehicles used to move such equipment which does not exceed ten feet [3.05 meters] in width when being moved by contractors or resident carriers.
 - b. Implements of husbandry being moved by resident farmers, ranchers, dealers, or manufacturers between sunrise and sunset. Furthermore, the limitation does not apply to implements of husbandry being moved between sunset and sunrise by resident farmers, ranchers, dealers, or manufacturers on public state, county, or township highway systems other than interstate highway systems.

¹³⁵ Section 39-12-04 was also amended by section 3 of Senate Bill No. 2213, chapter 307, and section 1 of House Bill No. 1062, chapter 331.

- c. Hay in the stack or bale being moved along the extreme right edge of a roadway between sunrise and sunset by someone other than a commercial mover.
 - d. Commercial movement of haystacks or hay bales with vehicles designed specifically for hauling hay, commercial movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, whether operating under their own power or being transported by another vehicle, commercial movement of portable grain cleaners, commercial movement of forage harvesters, and the commercial movement of hay grinders, which may be moved on the highway after obtaining a seasonal permit issued by the highway patrol. The highway patrol shall issue seasonal permits that are valid during daylight hours on any day of the week, or that are valid at all times for the movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, to any commercial entity otherwise qualified under this subdivision. Self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators operating under their own power between sunset and sunrise must display vehicle hazard warning signal lamps as described in subsection 3 of section 39-21-19.1. The seasonal permit is in lieu of registration requirements for the permit period. No seasonal permit may be issued, unless proof of financial responsibility in a minimum of three hundred thousand dollars is filed and the appropriate permit fee is paid. The seasonal permit may also be issued for hauling hay bales with vehicles or vehicle combinations other than those designed specifically for hauling haystacks. This seasonal permit, however, will not be in lieu of registration requirements. All permit fees must be deposited in the state highway distribution fund.
 - e. Safety devices that the highway patrol determines are necessary for the safe and efficient operation of motor vehicles may not be included in the calculation of width.
 - f. Any nonload carrying safety appurtenance as determined by the highway patrol which extends no more than three inches [7.62 centimeters] from each side of a trailer is excluded from the measurement of trailer width. The width of a trailer is measured across the sidemost load carrying structures, support members, and structural fasteners.
 - g. The highway patrol may adopt reasonable rules for those vehicles exempted from the width limitations as provided for in this subsection.
2. a. A Vehicles operated on a highway in this state may not exceed a height of fourteen feet [4.27 meters], whether loaded or unloaded. This height limitation does not affect any present structure such as bridges and underpasses that are not fourteen feet [4.27 meters] in height.
- b. ~~The~~ This limitation in subdivision a does not apply to vehicles that are at most fifteen feet six inches [4.72 meters] high when all of the following apply:

- ~~(1)~~ a. The vehicle is an implement of husbandry and is being moved by a resident farmer, rancher, dealer, or manufacturer.
 - ~~(2)~~ b. The trip is at most sixty miles [96.56 kilometers].
 - ~~(3)~~ c. The trip is between sunrise and sunset.
 - ~~(4)~~ d. None of the trip is on an interstate highway.
3. A length limitation as follows vehicle operated on a highway in this state may not exceed the following length limitations:
- a. A single unit vehicle with two or more axles including the load thereon may not exceed a length of fifty feet [15.24 meters].
 - b. A combination of two units including the load thereon may not exceed a length of seventy-five feet [22.86 meters].
 - c. A combination of three or four units including the load thereon may not exceed a length of seventy-five feet [22.86 meters], subject to any rules adopted by the director that are consistent with public highway safety. The rules do not apply to a three-unit combination consisting of a truck tractor and semitrailer drawing a trailer or semitrailer.
 - d. A combination of two, three, or four units including the load thereon may be operated on all four-lane divided highways and those highways in the state designated by the director and local authorities as to the highways under their respective jurisdictions and may not exceed a length of one hundred ten feet [33.53 meters], subject to any rules adopted by the director that are consistent with public highway safety.
 - e. The length of a trailer or semitrailer, including the load thereon, may not exceed fifty-three feet [16.5 meters] except that trailers and semitrailers titled and registered in North Dakota before July 1, 1987, and towed vehicles may not exceed a length of sixty feet [18.29 meters].
4. Length limitations do not apply to:
- ~~(1)~~ a. Building moving equipment.
 - ~~(2)~~ b. Emergency tow trucks towing disabled lawful combinations of vehicles to a nearby repair facility.
 - ~~(3)~~ c. Vehicles and equipment owned and operated by the armed forces of the United States or the national guard of this state.
 - ~~(4)~~ d. Structural material of telephone, power, and telegraph companies.
 - ~~(5)~~ e. Truck-mounted haystack moving equipment, provided ~~such~~ the equipment does not exceed a length of fifty-six feet [17.07 meters].
 - ~~(6)~~ f. A truck tractor and semitrailer or truck tractor, semitrailer, and the trailer when operated on the interstate highway system or parts of

the federal aid primary system as designated by the director, only when federal law requires the exemption.

- (7) g. Safety and energy conservation devices and any additional length exclusive devices as determined by the highway patrol for the safe and efficient operation of commercial motor vehicles. Length exclusive devices are appurtenances at the front or rear of a commercial motor vehicle semitrailer or trailer, whose function is related to the safe and efficient operation of the semitrailer or trailer.
- f. ~~The length of a trailer or semitrailer, including the load thereon, may not exceed fifty three feet [16.15 meters] except that trailers and semitrailers titled and registered in North Dakota prior to July 1, 1987, and towed vehicles may not exceed a length of sixty feet [18.29 meters].~~

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

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 311**SENATE BILL NO. 2105**

(Transportation Committee)

(At the request of the Department of Transportation)

**CERTIFICATE OF TITLE SUSPENSION OR
REVOCATION**

AN ACT to amend and reenact subsection 1 of section 39-05-09.2 of the North Dakota Century Code, relating to grounds for suspension or revocation of a motor vehicle certificate of title.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 39-05-09.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The department shall suspend or revoke a certificate of title, upon notice and reasonable opportunity to be heard in accordance with chapter 28-32, when authorized by any other provision of law or if it finds:
 - a. The certificate of title was fraudulently procured or erroneously issued; ~~or~~
 - b. The vehicle has been scrapped, dismantled, destroyed; or
 - c. A person has acquired a vehicle but has failed to transfer the ownership as required by this chapter.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 312

SENATE BILL NO. 2149

(Transportation Committee)

(At the request of the Department of Transportation)

LICENSING OF DRIVERS

AN ACT to amend and reenact sections 39-06-13 and 39-06-32, subdivision b of subsection 5 of section 39-06.1-03, subsection 17 of section 39-06.2-02, sections 39-06.2-06 and 39-06.2-16, subsection 3 of section 39-08-13, and section 39-16.1-10 of the North Dakota Century Code, relating to examination of applicants, evidence of actions against drivers received from other jurisdictions, issuance of a temporary certificate after granting a stay pending appeal, definition of gross vehicle weight rating, seasonal exemption from commercial driver's license requirements, time for submission of accident reports by law enforcement, and proof of future financial responsibility by nonresidents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-13 of the North Dakota Century Code is amended and reenacted as follows:

39-06-13. Examination of applicants. The director shall examine every applicant for an operator's license, except as otherwise provided in this chapter. The examination must include a test of the applicant's eyesight, ability to read and understand highway signs regulating, warning, and directing traffic, and knowledge of the traffic laws of this state. During testing, any written portion of the examination, except writing on illustrations of signs, must be made available to an applicant in any widely practiced language. The director may waive the written portion of the examination for an applicant who has successfully passed a written examination in another state and has a license that is not revoked, suspended, or canceled or in the process of being revoked, suspended, or canceled. An actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle is also required, but may be waived for an applicant who has successfully passed an actual ability test in this or another state. Operators' examinations must be given at locations designated by the director. The director may require any other physical or mental examination.

¹³⁶ **SECTION 2. AMENDMENT.** Section 39-06-32 of the North Dakota Century Code is amended and reenacted as follows:

39-06-32. Authority to suspend licenses. The director may suspend the license of an operator, after hearing, upon proof by a fair preponderance of the evidence, that any of the following apply to the licensee:

¹³⁶ Section 39-06-32 was also amended by section 1 of House Bill No. 1161, chapter 316.

1. Commission of an offense for which mandatory revocation of license is required upon conviction.
2. Incompetence to drive a motor vehicle.
3. Unlawful or fraudulent use of an operator's license.
4. Refusal to submit to an implied consent chemical test on an Indian reservation or in another state. For purposes of this subsection, the specific requirements for establishing a refusal used on the Indian reservation or in the other state may not be considered, and photostatic copies of the records of the other jurisdiction's drivers licensing authority are sufficient evidence of the refusal whether or not those copies are certified. The suspension must be for the same length of time as the revocation in section 39-20-04. If the refusal arose out of an arrest or stop of a person while operating a commercial motor vehicle, the period of suspension must be the same as the period of revocation provided in section 39-06.2-10.
5. Failure, as shown by the certificate of the court, to pay a fine or serve any other sentence as ordered by a court upon conviction for any criminal traffic offense.
6. Failure, as shown by the certificate of the court, to appear in court or post and forfeit bond after signing a promise to appear, if signing is required by law, in violation of section 39-06.1-04, willful violation of a written promise to appear in court, in violation of section 39-07-08, or violation of equivalent ordinances or laws in another jurisdiction. Upon resolution by the operator of the underlying cause for a suspension under this subsection, as shown by the certificate of the court, the director shall record the suspension separately on the driving record. This separate record is not available to the public.
7. An administrative decision on an Indian reservation or in another state that the licensee's privilege to drive on that Indian reservation or in that state is suspended or revoked because of a violation of that Indian reservation's or state's law forbidding motor vehicle operation with an alcohol concentration of at least ten 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, or because of a violation of that Indian reservation's or state's law forbidding the driving or being in actual physical control of a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight. The specific requirements for establishing the violation on the Indian reservation or in the other state may not be considered and certified copies of the records of the Indian reservation's or other state's drivers licensing authority are sufficient evidence of the violation. The suspension must be for the same duration as the suspension in section 39-20-04.1, if the violation does not involve a commercial motor vehicle. If the violation involves a commercial motor vehicle, the period of suspension must be the same as the period of suspension provided in section 39-06.2-10. For purposes of this section, originals, photostatic copies, or electronic transmissions of the records of the drivers licensing or other authority of the other jurisdiction are sufficient evidence whether or not they are certified copies.

8. Conviction of an offense under this title and it appears from the director's records that the offense contributed to causing an accident which resulted in death or serious personal injury or serious property damage. No suspension may be imposed if the person has been sanctioned for the same offense under section 39-06-31.

SECTION 3. AMENDMENT. Subdivision b of subsection 5 of section 39-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- b. The appellate court upon application by the appellant may:
 - (1) Order a stay of any action by the licensing authority during pendency of the appeal, but not to exceed a period of one hundred twenty days;
 - (2) Order a stay and that the appellant be issued a temporary restricted driving certificate by the licensing authority to be effective for no more than one hundred twenty days; or
 - (3) Deny the application.

An application for a stay or temporary certificate under this subdivision must be accompanied by a certified copy of the appellant's driving record, for the furnishing of which the licensing authority may charge a fee of ~~two~~ three dollars. Any order granting a stay or a temporary certificate must be forwarded forthwith by the clerk of court to the licensing authority, which immediately shall issue a temporary certificate in accordance with the order in the manner provided by law. A court may not make a determination on an application under this subdivision without notice to the appropriate prosecuting attorney. A person who violates or exceeds the restrictions contained in any temporary restricted driving certificate issued pursuant to this subdivision is guilty of a traffic violation and must be assessed a fee of twenty dollars.

¹³⁷ **SECTION 4. AMENDMENT.** Subsection 17 of section 39-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

17. "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single or a combination (articulated) vehicle, ~~or registered gross weight, whichever is greater.~~ The gross vehicle weight rating of a combination (articulated) vehicle (commonly referred to as the "gross combination weight rating") is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating or actual weight of the towed unit or units.

SECTION 5. 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.

¹³⁷ Section 39-06.2-02 was also amended by section 4 of Senate Bill No. 2150, chapter 322.

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, 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 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, and livestock feeders.

SECTION 6. 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 and treat them for sanctioning purposes under this chapter as if they occurred in this state. ~~Certified copies of the records of the other state's driver's licensing authority are sufficient evidence of the conviction.~~ 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.

SECTION 7. AMENDMENT. Subsection 3 of section 39-08-13 of the North Dakota Century Code is amended and reenacted as follows:

3. Every law enforcement officer who investigates a vehicle accident for which a report must be made as required in this chapter shall forward a report of such accident to the department within ~~five~~ ten days after ~~investigation~~ of the accident.

SECTION 8. AMENDMENT. Section 39-16.1-10 of the North Dakota Century Code is amended and reenacted as follows:

39-16.1-10. Nonresident owner.

1. The nonresident owner of a motor vehicle not registered in this state may give proof of financial responsibility by filing with the director a written or electronically transmitted certificate of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in ~~such~~ the certificate is registered, or if ~~such~~ the nonresident does not own a motor vehicle, then in the state in which the insured resides, provided ~~such~~ the certificate otherwise conforms to the provisions of this chapter, and the director shall accept the same upon condition that ~~said~~ the insurance carrier complies with the following provisions with respect to the policies so certified:
 - a. ~~Said~~ The insurance carrier shall execute a power of attorney authorizing the director to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state.
 - b. ~~Said~~ The insurance carrier shall agree in writing that ~~such~~ the policies ~~shall be deemed to~~ conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.
2. If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any ~~said~~ undertaking or ~~agreements~~ agreement, the director may not thereafter accept as proof any certificate of ~~said~~ the carrier whether ~~thereof~~ thereof filed up to that time or thereafter tendered as proof, so long as ~~such~~ the default continues.

3. Notwithstanding the requirement of subsection 1, the nonresident owner of a motor vehicle not registered in this state may file proof of future financial responsibility of an insurance company or other state-authorized entity providing insurance and authorized or licensed to do business in the nonresident's state of residence as long as such proof of future financial responsibility is in the amounts required by this state.

Approved April 23, 2003
Filed April 23, 2003

CHAPTER 313

SENATE BILL NO. 2207

(Senators Trenbeath, Fischer)

(Representative Nelson)

DRIVER'S LICENSE EXAMINATIONS

AN ACT to amend and reenact section 39-06-14 of the North Dakota Century Code, relating to license examinations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁸ **SECTION 1. AMENDMENT.** Section 39-06-14 of the North Dakota Century Code is amended and reenacted as follows:

39-06-14. Licenses issued to operators - General - Classified driver's license.

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 unless specifically requested by an applicant. 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. No license is valid until it has been signed by the licensee with the 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. 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.

¹³⁸ Section 39-06-14 was also amended by section 1 of House Bill No. 1443, chapter 314.

2. ~~a.~~ ~~All applicants~~ An applicant holding a valid North Dakota operator's license making application for renewal must be issued a class D license without being subjected to an examination ~~as herein provided.~~
3. ~~b.~~ ~~All applicants~~ An applicant, except ~~those~~ an applicant holding a valid North Dakota operator's license who will be issued a class D license, applying for issuance of ~~an operator license~~ license must be issued a classified license after having been required to submit to an examination in the type of motor vehicle or combination of vehicles for which license is desired and which license shall authorize the holder to drive the vehicles as provided in section 39-06.2-09, or as follows:
- (1) ~~a.~~ Class A driver with a class D- Any license may operate any single vehicle with a gross vehicle weight rating of twenty-six thousand pounds [11793.40 kilograms] or less or any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand pounds [4535.92 kilograms]. A driver with a class D license may operate a farm tractor towing another vehicle having a gross weight in excess of ten thousand pounds [4535.92 kilograms], and a truck towing a trailer, semitrailer, or farm trailer when the gross weight of the trailer, semitrailer, or farm trailer, not including the weight of the towing vehicle, does not exceed sixteen thousand pounds [7257.48 kilograms].
- (2) A driver with a class D license may operate a house car or a vehicle towing a travel trailer being used solely for personal purposes ~~may be driven with a class D license.~~
- (3) ~~b.~~ Farm exemption. The holder of A driver with a class D license may operate any two-axle or tandem-axle motor vehicle, a farm tractor towing another vehicle having a gross weight in excess of six thousand pounds [2721.55 kilograms], and a truck or truck tractor towing a trailer, semitrailer, or farm trailer if the driver is exempted from a commercial driver's license under subsection 3 of section 39-06.2-06, except:
- (a) ~~A~~ the driver may not operate a double trailer, triple trailer, or, if under eighteen years of age, a truck tractor as defined in section 39-01-01.
- (b) ~~A~~ or a bus designed to carry sixteen or more passengers, including the driver.
- (4) ~~c.~~ Class A driver with a class M- Any licensee may operate motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding motorized bicycles, tractors, and vehicles on which the operator or passengers, or both, ride within an enclosed cab. A class M vehicle may not be operated under a class A, B, C, or D license.
- ~~e.~~ (1) The holder of a class A, B, C, or D license may receive a class M endorsement upon successful completion of an examination. The director may waive the skill portion of the

examination if the applicant has successfully completed a motorcycle safety course approved by the director.

d. ~~The holder of a class A, B, or C license may drive any vehicle in that classification, or lesser classification, except a class M vehicle.~~

e. (2) An applicant sixteen years of age and older, who does not hold a current valid operator's license may be issued a class M learner's permit after successful completion of a written examination. The class M license will be issued after the applicant has successfully completed a driver's examination. The director may waive the skill portion of the examination if the applicant has successfully completed a motorcycle safety course approved by the director.

f. (3) Applicants fourteen or fifteen years of age may be issued a motorcycle learner's permit if the applicant is enrolled in or has completed an approved motorcycle safety course. Applicants for a motorcycle operator's license who are under sixteen years of age shall hold an initial learner's permit for at least two months before applying for a class M operator's license, shall have completed an approved motorcycle safety course, and shall hold a valid motorcycle learner's permit at the time of application. The director may waive the skill portion of the examination if the applicant has successfully completed a motorcycle safety course approved by the director. Any person under sixteen years of age who holds a permit or license is restricted to the operation of a motorcycle powered with an engine of two hundred fifty cubic centimeters, or less, displacement. Evidence that the applicant has satisfactorily completed a motorcycle safety course which meets the minimum requirements of the motorcycle safety foundation must accompany the application.

4. The holder of a class A, B, or C license may drive any vehicle in that or a lesser classification, except a class M vehicle.

~~3.~~ 5. Any holder of a classified license who drives a motor vehicle otherwise than as permitted by the class of license issued to the holder is deemed to be driving a motor vehicle without being duly licensed under this chapter. The holder of a classified license who desires to obtain a different class license in one of the classes provided by this chapter must exchange or renew the license. The director may adopt rules the director determines are necessary with respect to such renewals or exchanges for the proper administration of this chapter. No class A, B, or C license may be issued to any person under eighteen years of age, except a class A, B, or C type license specially restricted to use for custom harvest purposes must be issued to a person at least sixteen years of age who satisfactorily completes the appropriate examinations.

~~4.~~ 6. If Before operating any motor vehicle or motorcycle, any holder of a license issued pursuant to this chapter suffers who has suffered permanent loss of use of a hand, arm, foot, leg, or eye, the person shall, before operating any motor vehicle or motorcycle, make a report thereof the loss of use to the director who shall take such reasonable action as

may be proper under the provisions of this chapter as to reexamination the licensee to determine if the licensee is capable of operating vehicles for which the ~~individual~~ licensee is licensed.

5. 7. The director may issue a motorized bicycle operator's permit to an applicant who is at least fourteen years of age. To obtain a permit, the applicant shall pay a fee of ten dollars and take a written examination of the applicant's knowledge of traffic laws and general rules of the road. If the applicant passes the written examination and the director is satisfied that the applicant has adequate eyesight, the director may issue the applicant a motorized bicycle operator's permit, even if the applicant does not have an operator's license. The permit expires in the same manner as an operator's license. A person who has an operator's license, a temporary permit, an instruction permit, or a motorcycle permit is not required to obtain a motorized bicycle operator's permit.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 314

HOUSE BILL NO. 1443

(Representatives Thorpe, Iverson, Kasper, S. Kelsh)
(Senators Fischer, Seymour)

SOCIAL SECURITY NUMBER USE ON DRIVER'S LICENSES

AN ACT to amend and reenact subsection 1 of section 39-06-14 of the North Dakota Century Code, relating to a social security number on a driver's license; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³⁹ **SECTION 1. 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 ~~unless specifically requested by an applicant~~. 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. No license is valid until it has been signed by the licensee with the 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. 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.

¹³⁹ Section 39-06-14 was also amended by section 1 of Senate Bill No. 2207, chapter 313.

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

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 315

HOUSE BILL NO. 1277

(Representatives Koppelman, Boehning, DeKrey, Kingsbury, Wieland)
(Senator J. Lee)

SURRENDER OF OPERATOR'S LICENSES

AN ACT to amend and reenact section 39-06-16 of the North Dakota Century Code, relating to the display of a motor vehicle operator's license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-16 of the North Dakota Century Code is amended and reenacted as follows:

39-06-16. License to be carried and exhibited on demand. ~~Every~~ A licensee shall have the licensee's operator's license or permit in the licensee's immediate possession at all times when operating a motor vehicle and shall ~~display~~ physically surrender the same license or permit, upon demand of any district court, municipal court, a patrolman, peace officer, or a field deputy or inspector of the department. However, ~~no~~ a person charged with violating this section may not be convicted or assessed any court costs if the person produces in court, to the chief of police, or in the office of the arresting officer an operator's license or permit ~~theretofore~~ issued to that person and valid and not under suspension, revocation, or cancellation at the time of the person's arrest.

Approved March 31, 2003
Filed March 31, 2003

CHAPTER 316

HOUSE BILL NO. 1161

(Transportation Committee)

(At the request of the Department of Transportation)

ALCOHOL LEVEL FOR MOTOR VEHICLE OFFENSES

AN ACT to amend and reenact section 39-06-32, subsection 1 of section 39-08-01, sections 39-20-03.1 and 39-20-03.2, subsection 1 of section 39-20-04.1, subsections 2 and 5 of section 39-20-05, and sections 39-20-07 and 39-20-09 of the North Dakota Century Code, relating to the level of alcohol concentration prohibited for motor vehicle operators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁰ **SECTION 1. AMENDMENT.** Section 39-06-32 of the North Dakota Century Code is amended and reenacted as follows:

39-06-32. Authority to suspend licenses. The director may suspend the license of an operator, after hearing, upon proof by a fair preponderance of the evidence, that any of the following apply to the licensee:

1. Commission of an offense for which mandatory revocation of license is required upon conviction.
2. Incompetence to drive a motor vehicle.
3. Unlawful or fraudulent use of an operator's license.
4. Refusal to submit to an implied consent chemical test on an Indian reservation or in another state. For purposes of this subsection, the specific requirements for establishing a refusal used on the Indian reservation or in the other state may not be considered, and photostatic copies of the records of the other jurisdiction's drivers licensing authority are sufficient evidence of the refusal whether or not those copies are certified. The suspension must be for the same length of time as the revocation in section 39-20-04. If the refusal arose out of an arrest or stop of a person while operating a commercial motor vehicle, the period of suspension must be the same as the period of revocation provided in section 39-06.2-10.
5. Failure, as shown by the certificate of the court, to pay a fine or serve any other sentence as ordered by a court upon conviction for any criminal traffic offense.
6. Failure, as shown by the certificate of the court, to appear in court or post and forfeit bond after signing a promise to appear, if signing is

¹⁴⁰ Section 39-06-32 was also amended by section 2 of Senate Bill No. 2149, chapter 312.

required by law, in violation of section 39-06.1-04, willful violation of a written promise to appear in court, in violation of section 39-07-08, or violation of equivalent ordinances or laws in another jurisdiction. Upon resolution by the operator of the underlying cause for a suspension under this subsection, as shown by the certificate of the court, the director shall record the suspension separately on the driving record. This separate record is not available to the public.

7. An administrative decision on an Indian reservation or in another state that the licensee's privilege to drive on that Indian reservation or in that state is suspended or revoked because of a violation of that Indian reservation's or state's law forbidding motor vehicle operation with an alcohol concentration of at least ~~ten~~ 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, or because of a violation of that Indian reservation's or state's law forbidding the driving or being in actual physical control of a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight. The specific requirements for establishing the violation on the Indian reservation or in the other state may not be considered and certified copies of the records of the Indian reservation's or other state's drivers licensing authority are sufficient evidence of the violation. The suspension must be for the same duration as the suspension in section 39-20-04.1, if the violation does not involve a commercial motor vehicle. If the violation involves a commercial motor vehicle, the period of suspension must be the same as the period of suspension provided in section 39-06.2-10.
8. Conviction of an offense under this title and it appears from the director's records that the offense contributed to causing an accident which resulted in death or serious personal injury or serious property damage. No suspension may be imposed if the person has been sanctioned for the same offense under section 39-06-31.

¹⁴¹ **SECTION 2. AMENDMENT.** Subsection 1 of section 39-08-01 of the North Dakota Century Code, as effective after July 31, 2003, is amended and reenacted as follows:

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
 - a. That person has an alcohol concentration of at least ~~ten~~ eight 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.
 - b. That person is under the influence of intoxicating liquor.

¹⁴¹ Section 39-08-01 was also amended by section 1 of House Bill No. 1191, chapter 323.

- c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
- d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.

The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

SECTION 3. 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 ~~ten~~ 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 state toxicologist and if the analysis shows that person had an alcohol concentration of at least ~~ten~~ 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. 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 ~~ten~~ 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.

SECTION 4. AMENDMENT. Section 39-20-03.2 of the North Dakota Century Code is amended and reenacted as follows:

39-20-03.2. Action following test result or on refusing test by nonresident operator. If a person licensed in another state refuses in this state to submit to a test provided under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test results show the person to have an alcohol concentration of at least ~~ten~~ 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 performance of a test within two hours after driving or being in physical control of a motor vehicle, the following procedures apply:

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05. The temporary permit must be signed and dated by the officer and 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, and of the hearing procedures under this chapter.
2. If the test was administered by saliva or urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the person had an alcohol concentration of at least ~~ten~~ 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,

shall mail or issue to the person a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer.

3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer. If the person was issued a temporary operator's permit because of the person's refusal to submit to a test under sections 39-20-01 and 39-20-14, the report must include information as provided in section 39-20-04. If the person was issued a temporary operator's permit because of the results of a test, the 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 ~~ten~~ 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.

¹⁴² **SECTION 5. AMENDMENT.** Subsection 1 of section 39-20-04.1 of the North Dakota Century Code is amended and reenacted as follows:

1. After the receipt of a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least ~~ten~~ 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 test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's operator's license as follows:
 - a. For ninety-one days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent

¹⁴² Section 39-20-04.1 was also amended by section 3 of House Bill No. 1439, chapter 321.

ordinance or the person's operator's license has not previously been suspended or revoked under this chapter.

- b. For three hundred sixty-five days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter.
- c. For two years if the person's driving record shows that within the five years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.

SECTION 6. AMENDMENT. Subsections 2 and 5 of section 39-20-05 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least ~~ten~~ 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, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest, unless the person was under twenty-one years of age and the alcohol concentration was less than ~~ten~~ eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the person was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the person had an alcohol concentration of at least ~~ten~~ 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. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the state toxicologist or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's

official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at least ~~ten~~ 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, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.

¹⁴³ **SECTION 7. AMENDMENT.** Section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

39-20-07. Interpretation of chemical tests. Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, drugs, or a combination thereof in the person's blood at the time of the act alleged as shown by a chemical analysis of the blood, breath, saliva, or urine is admissible. For the purpose of this section:

1. A person having, at that time, an alcohol concentration of not more than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor. This presumption has no application to the administration of chapter 39-06.2.
2. Evidence that there was at that time more than five one-hundredths of one percent by weight alcohol concentration in a person is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of intoxicating liquor.
3. A person having an alcohol concentration of at least ~~ten~~ 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 driving or being in physical control of a vehicle is under the influence of intoxicating liquor at the time of driving or being in physical control of a vehicle.
4. 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 or grams of alcohol per sixty-seven milliliters of urine.

¹⁴³ Section 39-20-07 was also amended by section 11 of Senate Bill No. 2151, chapter 469.

5. The results of the chemical analysis must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the state toxicologist, and by an individual possessing a certificate of qualification to administer the test issued by the state toxicologist. The state toxicologist is authorized to approve satisfactory devices and methods of chemical analysis and determine the qualifications of individuals to conduct such analysis, and shall issue a certificate to all qualified operators who exhibit the certificate upon demand of the person requested to take the chemical test.
6. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county commissioners designates a different official, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

7. Copies of the records referred to in subsections 5 and 6, certified by the recorder, or designated official, must be admitted as prima facie evidence of the matters stated in the records.
8. A certified copy of the analytical report of a blood, urine, or saliva analysis referred to in subsection 5 and which is issued by the state toxicologist must be accepted as prima facie evidence of the results of a chemical analysis performed under this chapter. The certified copy satisfies the directives of subsection 5.
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 forensic sciences division of the state department of health, 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.

10. A signed statement from the individual medically qualified to draw the blood sample for testing as set forth in subsection 5 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of this evidence may be required.

SECTION 8. AMENDMENT. Section 39-20-09 of the North Dakota Century Code is amended and reenacted as follows:

39-20-09. Effect of evidence of chemical test. This chapter does not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the test results show an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent 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, the purpose of such evidence must be limited to the issues of probable cause, whether an arrest was made prior to the administering of the test, and the validity of the test results.

Approved April 7, 2003
Filed April 7, 2003

CHAPTER 317

HOUSE BILL NO. 1047

(Legislative Council)
(Judiciary B Committee)

SPEED LIMITS AND VIOLATIONS

AN ACT to amend and reenact sections 39-06.1-05 and 39-06.1-06, paragraph 33 of subdivision a of subsection 3 of section 39-06.1-10, and sections 39-07-09, 39-08-21, 39-09-02, 39-21-16, and 39-21-46 of the North Dakota Century Code, relating to driving in excess of the speed limit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁴ **SECTION 1. AMENDMENT.** Section 39-06.1-05 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-05. Offenses excepted. The procedures authorized under sections 39-06.1-02 and 39-06.1-03 may not be utilized by a person charged with one of the following offenses:

1. Driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance.
2. Reckless driving or aggravated reckless driving in violation of section 39-08-03, or an equivalent ordinance.
3. A violation of chapter 12.1-16 resulting from the operation of a motor vehicle.
4. Leaving the scene of an accident in violation of section 39-08-04, 39-08-05, 39-08-07, or 39-08-08, or equivalent ordinances.
5. Driving while license or driving privilege is suspended or revoked in violation of section 39-06-42, or an equivalent ordinance.
6. Violating subdivision b or c of subsection 5 of section 39-24-09.
7. Operating a modified motor vehicle in violation of section 39-21-45.1.
8. Driving without liability insurance in violation of section 39-08-20.
9. Operating an unsafe vehicle in violation of ~~subdivision b~~ of subsection 4 2 of section 39-21-46.

¹⁴⁴ Section 39-06.1-05 was also amended by section 1 of House Bill No. 1394, chapter 318.

¹⁴⁵ **SECTION 2. AMENDMENT.** Section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-06. Amount of statutory fees. The fees required for a noncriminal disposition pursuant to either section 39-06.1-02 or 39-06.1-03 must be as follows:

1. For a nonmoving violation as defined in section 39-06.1-08, a fee of any amount not to exceed twenty dollars.
2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars, except for:
 - a. A violation of section 39-10-26, 39-10-26.2, 39-10-41, 39-10-42, 39-10-46, or 39-10-46.1, a fee of fifty dollars.
 - b. A violation of section 39-10-05 involving failure to yield to a pedestrian or subsection 1 of section 39-10-28, a fee of fifty dollars.
 - c. A violation of section 39-21-41.2, no fee may be imposed by the state, a city, or a county including a city or county operating under a home rule charter.
3. Except as provided in subsections 7, ~~and 11, and 12~~ of this section, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

Miles per hour over lawful speed limit	Fee
1 - 5	\$ 5
6 - 10	\$ 5 plus \$1/each mph over 5 mph over limit
11 - 15	\$ 10 plus \$1/each mph over 10 mph over limit
16 - 20	\$ 15 plus \$2/each mph over 15 mph over limit
21 - 25	\$ 25 plus \$3/each mph over 20 mph over limit
26 - 35	\$ 40 plus \$3/each mph over 25 mph over limit
36 - 45	\$ 70 plus \$3/each mph over 35 mph over limit
46 +	\$100 plus \$5/each mph over 45 mph over limit

4. For a violation of section 39-09-01, or an ordinance defining careless driving, a fee of thirty dollars.
5. For a violation of section 39-09-01.1, or an ordinance defining care required in driving, a fee of not less than ten dollars nor more than thirty dollars.
6. For a violation of any traffic parking regulations, except a violation of subsection 10 of section 39-01-15, on any state charitable or penal institution property or on the state capitol grounds, a fee in the amount of five dollars.

¹⁴⁵ Section 39-06.1-06 was also amended by section 1 of House Bill No. 1112, chapter 319, and section 1 of House Bill No. 1322, chapter 320.

7. ~~Except as provided in subsection 44, on~~ On a highway on which the speed limit is a speed higher than fifty-five miles [88.51 kilometers] an hour, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

Miles per hour over lawful speed limit	Fee
1 - 5 <u>10</u>	\$ 40 plus \$1/each <u>\$2/each</u> mph over limit
6 - 10	\$ 45 plus \$2/each <u>5</u> mph over limit
11 - 15 <u>+</u>	\$ 25 <u>20</u> plus \$3/each <u>\$5/each</u> mph over 10 mph over limit
16 - 20	\$ 40 plus \$3/each <u>15</u> mph over limit
21 - 25	\$ 55 plus \$3/each <u>20</u> mph over limit
26 - 35	\$ 70 plus \$3/each <u>25</u> mph over limit
36 - 45	\$120 plus \$5/each <u>35</u> mph over limit
46+	\$170 plus \$5/each <u>45</u> mph over limit

8. For a violation of section 39-21-41.4, a fee not to exceed twenty dollars.
9. For a violation of section 39-21-44 or a rule adopted under that section, a fee of two hundred fifty dollars.

10. For a violation of subsection ~~2~~ 3 of section 39-21-46, a fee established as follows:

- a. Driving more than ten hours since the last eight hours off duty, driving after fifteen hours on duty since the last eight hours off duty, driving after sixty hours on duty in seven days or seventy hours in eight days, no record of duty status or log book in possession, failing to retain previous seven-day record of duty status or log book, or operating a vehicle with four to six out-of-service defects, one hundred dollars;
- b. False record of duty status or log book or operating a vehicle with seven to nine out-of-service defects, two hundred fifty dollars;
- c. Operating a vehicle after driver placed out of service, operating a vehicle with ten or more out-of-service defects, or operating a vehicle that has been placed out of service prior to its repair, five hundred dollars; and
- d. All other violations of motor carrier safety rules adopted under subsection ~~2~~ 3 of section 39-21-46, fifty dollars.

11. On a highway on which the speed limit is posted in excess of ~~seventy~~ sixty-five miles [442.65 ~~104.61~~ kilometers] an hour, for a violation of section 39-09-02, or equivalent ordinance, a fee established as follows:

Miles per hour over lawful speed limit	Fee
4 - 5	\$ 20
6 - 10	\$ 40
11 - 15	\$ 60
16 - 20	\$ 80

24 - 25	\$100
26 - 30	\$125
31 - 35	\$150
36 +	\$150 plus \$5/each mph over 35 mph over limit

of five dollars for each mile per hour over the limit.

- 12. For a violation of a school zone speed limit under subdivision b of subsection 1 of section 39-09-02, of a highway construction zone speed limit under subsection 2 of section 39-09-02, or, notwithstanding subsection 2 of section 40-05-06 or section 40-05.1-06, of an ordinance in a city or home rule city for a violation of a speed limit dependent upon being on or near a school, fees for a noncriminal disposition are forty dollars for one through ten miles per hour over the posted speed; and forty dollars, plus one dollar for each additional mile per hour over ten miles per hour over the limit unless a greater fee would be applicable under this section. The fees in this subsection do not apply to a highway construction zone unless individuals engaged in construction are present at the time of the violation and the posted speed limit sign states "Minimum Fee \$40".

¹⁴⁶ **SECTION 3. AMENDMENT.** Paragraph 33 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- (33) On a highway on which the speed limit is posted in excess of ~~seventy~~ sixty-five miles [~~112.65~~ 104.61 kilometers] an hour, operating a motor vehicle in excess of the speed limit in violation of section 39-09-02, or equivalent ordinance

Miles per hour over lawful speed limit	Points
1 - 5	0
6 - 10	1
11 - 15	<u>2</u> <u>3</u>
16 - 20	5
21 - 25	7
26 - 30	10
31 - 35	12
36 +	15

SECTION 4. AMENDMENT. Section 39-07-09 of the North Dakota Century Code is amended and reenacted as follows:

¹⁴⁶ Section 39-06.1-10 was also amended by section 3 of House Bill No. 1394, chapter 318, and section 1 of House Bill No. 1439, chapter 321.

39-07-09. Offenses under which person halted may not be entitled to release upon promise to appear. Section 39-07-07 does not apply to a person if:

1. The halting officer has good reason to believe the person guilty of any felony or if the person is halted and charged with an offense listed in section 39-06.1-05 but not listed in subsection 2; or
2. The halting officer, acting within the officer's discretion, determines that it is inadvisable to release the person upon a promise to appear and if the person has been halted and charged with any of the following offenses:
 - a. Reckless driving.
 - b. Driving in excess of speed limitations established by the state or by local authorities in their respective jurisdictions.
 - c. Driving while license or driving privilege is suspended or revoked for violation of section 39-06-42, or an equivalent ordinance.
 - d. Operating a modified vehicle.
 - e. Driving without liability insurance in violation of section 39-08-20.
 - f. Failing to display a placard or flag, in violation of any rule implementing section 39-21-44, while transporting explosive or hazardous materials.
 - g. Operating an unsafe vehicle in violation of ~~subdivision b of~~ subsection 4 2 of section 39-21-46.

The halting officer forthwith shall take any person not released upon a promise to appear before the nearest or most accessible magistrate.

SECTION 5. AMENDMENT. Section 39-08-21 of the North Dakota Century Code is amended and reenacted as follows:

39-08-21. Medical qualifications exemption for intrastate drivers. Notwithstanding the adoption by the superintendent of the state highway patrol of federal motor carrier safety regulations pursuant to subsection ~~2~~ 3 of section 39-21-46, the provisions of 49 CFR 391.41(b)(1)-(11) do not apply to a person who is qualified through a state medical waiver program to operate a commercial motor vehicle within the boundaries of this state or a person who:

1. Is otherwise qualified to operate a commercial motor vehicle and who possesses, on March 26, 1991, a class 1 license issued pursuant to section 39-06-14, as that section existed on June 30, 1989, or a class A license issued pursuant to chapter 39-06.2;
2. Operates a commercial motor vehicle only within the boundaries of this state; and
3. Has a medical or physical condition that:

- a. Would prevent such person from operating a commercial motor vehicle under federal motor carrier safety regulations contained in 49 CFR, chapter III, subchapter B;
- b. Existed on March 26, 1991, or at the time of the first required physical examination after that date; and
- c. An examining physician has determined has not substantially worsened since March 26, 1991, or the time of the first required physical examination after that date.

¹⁴⁷ **SECTION 6. AMENDMENT.** Section 39-09-02 of the North Dakota Century Code as amended in section 1 of House Bill No. 1046, as approved by the fifty-eighth legislative assembly, is amended and reenacted as follows:

39-09-02. Speed limitations.

1. Subject to the provisions of section 39-09-01 and except in those instances where a lower speed is specified in this chapter, it presumably is lawful for the driver of a vehicle to drive the same at a speed not exceeding:
 - a. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] of a grade crossing of any steam, electric, or street railway when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last two hundred feet [60.96 meters] of the driver's approach to such crossing, the driver does not have a clear and uninterrupted view of such railway crossing and of any traffic on such railway for a distance of four hundred feet [121.92 meters] in each direction from such crossing.
 - b. Twenty miles [32.19 kilometers] an hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours, unless a lower speed is designated or posted by local authorities.
 - c. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] and in traversing an intersection of highways when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last fifty feet [15.24 meters] of the driver's approach to such intersection, the driver does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the highways entering such intersection for a distance of two hundred feet [60.96 meters] from such intersection.
 - d. Twenty miles [32.19 kilometers] an hour when the driver's view of the highway ahead is obstructed within a distance of one hundred feet [30.48 meters].

¹⁴⁷ Section 39-09-02 was also amended by section 6 of House Bill No. 1012, chapter 12, and section 1 of House Bill No. 1046, chapter 325.

- e. Twenty-five miles [40.23 kilometers] an hour on any highway in a business district or in a residence district or in a public park, unless a different speed is designated and posted by local authorities.
 - f. Fifty-five miles [88.51 kilometers] an hour on gravel, dirt, or loose surface highways, and on paved two-lane county and township highways if there is no speed limit posted, unless otherwise permitted, restricted, or required by conditions.
 - g. Sixty-five miles [104.61 kilometers] an hour on paved two-lane highways ~~and on paved and divided multilane highways~~ if posted for that speed, unless otherwise permitted, restricted, or required by conditions.
 - h. Seventy miles [112.65 kilometers] an hour on ~~access-controlled, paved and divided, multilane interstate~~ highways, unless otherwise permitted, restricted, or required by conditions.
 - i. Seventy-five miles [120.70 kilometers] an hour on access-controlled, paved and divided, multilane interstate highways, unless otherwise permitted, restricted, or required by conditions.
2. The director may designate and post special areas of state highways where lower speed limits apply.
 3. Except as provided by law, it is unlawful for any person to drive a vehicle upon a highway at a speed that is unsafe or at a speed exceeding the speed limit prescribed by law or established pursuant to law.
 4. In charging a violation of the provisions of this section, the complaint must specify the speed at which the defendant is alleged to have driven and the speed which this section prescribes is prima facie lawful at the time and place of the alleged offense.

SECTION 7. AMENDMENT. Section 39-21-16 of the North Dakota Century Code is amended and reenacted as follows:

39-21-16. Lamps on other vehicles and equipment. Every vehicle, including animal-drawn vehicles and vehicles referred to in subsection ~~3~~ 4 of section 39-21-46, not specifically required by the provisions of this chapter to be equipped with lamps or other lighting devices, must at all times specified in section 39-21-01 be equipped with at least one lamp displaying a white light visible from a distance of not less than one thousand feet [304.8 meters] to the front of the vehicle, and must also be equipped with two lamps displaying red light visible from a distance of not less than one thousand feet [304.8 meters] to the rear of the vehicle, or two red reflectors visible for distances of one hundred feet [30.48 meters] to six hundred feet [182.88 meters] to the rear when illuminated by the lower beams of headlamps.

SECTION 8. AMENDMENT. Section 39-21-46 of the North Dakota Century Code is amended and reenacted as follows:

39-21-46. Scope and effect of equipment requirements - Penalty.

1. ~~a.~~ It is unlawful for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which the actor knows does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this chapter, or which the actor knows is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter for which a fee or penalty for its violation is not otherwise provided.
 - ~~b.~~
- ~~2.~~ 2. A person who drives or moves, or any owner who causes or knowingly permits to be driven or moved upon a highway, any vehicle or combination of vehicles which that person knows is in such unsafe condition as to endanger a person is guilty of an infraction.
- ~~2.~~ 3. The superintendent of the state highway patrol shall, under chapter 28-32, adopt necessary rules concerning the safe operation of motor vehicles and when and how motor carrier audits or inspections will be conducted. The rules must duplicate or be consistent with current motor carrier safety regulations of the United States department of transportation. The superintendent of the state highway patrol may adopt the motor carrier safety regulations by reference, and any adoption must be construed to incorporate amendments as may be made from time to time. A violation of rules adopted under this subsection is a noncriminal violation. A person who fails or refuses to comply with these rules must be assessed a fee in the amount set forth in ~~subsection 40 of~~ section 39-06.1-06 for each violation.
- ~~3.~~ 4. Nothing contained in this chapter may be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.
- ~~4.~~ 5. The provisions of this chapter with respect to equipment on vehicles do not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as specifically made applicable.
- ~~5.~~ 6. The provisions of this chapter with respect to equipment required on vehicles do not apply to motorcycles or motor-driven cycles, except as specifically made applicable.
- ~~6.~~ 7. The provisions of this chapter and regulations of the department do not apply to vehicles moved solely by human power, except as specifically made applicable.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 318

HOUSE BILL NO. 1394

(Representatives Aarsvold, Carlisle, Porter, Severson)
(Senators Heitkamp, Lyson)

VEHICLE ACCIDENT WITH EMERGENCY VEHICLE

AN ACT to create and enact a new subsection to section 39-06.1-05 and a new paragraph to subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to offenses exempted from administrative proceedings and demerit points; to amend and reenact sections 39-06.1-09 and 39-10-26 of the North Dakota Century Code, relating to yielding to an emergency vehicle; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴⁸ **SECTION 1.** A new subsection to section 39-06.1-05 of the North Dakota Century Code is created and enacted as follows:

Causing an accident with an authorized emergency vehicle in violation of subsection 4 of section 39-10-26.

¹⁴⁹ **SECTION 2. AMENDMENT.** Section 39-06.1-09 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-09. Moving violation defined. For the purposes of sections 39-06.1-06 and 39-06.1-13, a "moving violation" means a violation of section 39-04-22; subsection 1 of section 39-04-37; section 39-04-55; 39-06-01; 39-06-14; 39-06-16; 39-09-04.1; 39-09-09; 39-12-04; 39-12-05; 39-12-06; 39-12-09; 39-24-02; or 39-24-09, except subdivisions b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of chapter 39-10, 39-10.2, or 39-21, or equivalent ordinances, except subsection 4 of section 39-10-26, sections 39-21-44 and 39-21-45.1, and subdivision b of subsection 1 and subsection 2 of section 39-21-46, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

¹⁵⁰ **SECTION 3.** A new paragraph to subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is created and enacted as follows:

Causing an accident with 2 points
an authorized emergency
vehicle in violation of

¹⁴⁸ Section 39-06.1-05 was also amended by section 1 of House Bill No. 1047, chapter 317.

¹⁴⁹ Section 39-06.1-09 was also amended by section 2 of House Bill No. 1112, chapter 319.

¹⁵⁰ Section 39-06.1-10 was also amended by section 3 of House Bill No. 1047, chapter 317, and section 1 of House Bill No. 1439, chapter 321.

subsection 4 of section
39-10-26, or equivalent
ordinance

SECTION 4. AMENDMENT. Section 39-10-26 of the North Dakota Century Code is amended and reenacted as follows:

39-10-26. Operation of vehicle on approach of authorized emergency vehicle - Penalty.

1. Upon the immediate approach of an authorized emergency vehicle displaying a visible flashing, revolving, or rotating blue, white, or red light, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.
2. If an authorized emergency vehicle is parked or stopped at the scene of an emergency and is displaying a flashing, revolving, or rotating blue, white, or red light, approaching traffic shall move to the right-hand edge or curb of the roadway and shall stop, but once having stopped, traffic may proceed past the scene at its own risk when the roadway is clear, except when otherwise directed by a police officer. If an authorized emergency vehicle is otherwise parked or stopped on a multilane highway outside the limits of a city unless the highway is part of the interstate system, and the authorized emergency vehicle is displaying a flashing, revolving, or rotating amber, blue, white, or red light, the driver of an approaching vehicle shall proceed with caution and yield the right of way by moving to a lane that is not adjacent to the authorized emergency vehicle if the move may be made with due regard to safety and traffic conditions or if not, the driver shall proceed with due caution, reduce the speed of the vehicle, and maintain a safe speed for the road conditions.
3. This section does not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.
4. Any individual who violates subsection 2 and causes an accident with an authorized emergency vehicle while the authorized emergency vehicle is displaying a visible flashing, revolving, or rotating amber, blue, white, or red light is guilty of an infraction.

Approved April 11, 2003

Filed April 11, 2003

CHAPTER 319

HOUSE BILL NO. 1112

(Transportation Committee)

(At the request of the Department of Transportation)

TRAFFIC FEES, VIOLATIONS, AND EXCESS SIZE

AN ACT to amend and reenact subsection 2 of section 39-06.1-06, sections 39-06.1-09 and 39-12-02, subsection 1 of section 39-12-05.3, and sections 39-12-08, 39-12-09, and 39-12-17 of the North Dakota Century Code, relating to noncriminal disposition fees, definition of moving violation, vehicles of excessive size and weight, and limitations on loads extending beyond the sides of a motor vehicle; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵¹ **SECTION 1. AMENDMENT.** Subsection 2 of section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars, except for:
 - a. A violation of section 39-10-26, 39-10-26.2, 39-10-41, 39-10-42, 39-10-46, or 39-10-46.1, a fee of fifty dollars.
 - b. A violation of section 39-10-05 involving failure to yield to a pedestrian or subsection 1 of section 39-10-28, a fee of fifty dollars.
 - c. A violation of section 39-21-41.2, no fee may be imposed by the state, a city, or a county including a city or county operating under a home rule charter.
 - d. A violation of subsection 2 of section 39-12-02, a fee of one hundred dollars.

¹⁵² **SECTION 2. AMENDMENT.** Section 39-06.1-09 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-09. Moving violation defined. For the purposes of sections 39-06.1-06 and 39-06.1-13, a "moving violation" means a violation of section 39-04-22; subsection 1 of section 39-04-37; section 39-04-55; 39-06-01; 39-06-14; 39-06-16; 39-09-04.1; 39-09-09; subsection 2 of section 39-12-02; sections 39-12-04; 39-12-05; 39-12-06; 39-12-09; 39-24-02; or 39-24-09, except subdivisions b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of

¹⁵¹ Section 39-06.1-06 was also amended by section 2 of House Bill No. 1047, chapter 317, and section 1 of House Bill No. 1322, chapter 320.

¹⁵² Section 39-06.1-09 was also amended by section 2 of House Bill No. 1394, chapter 318.

chapter 39-10, 39-10.2, or 39-21, or equivalent ordinances, except sections 39-21-44 and 39-21-45.1 and subdivision b of subsection 1 and subsection 2 of section 39-21-46, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

SECTION 3. 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. A person operating a motor vehicle, or the owner of the motor vehicle being operated, without a permit as specified in subsection 1 must be assessed a fee of one hundred dollars.
- ~~2.~~ 3. 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.~~ 4. 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 highways and operating expenses of the department of transportation. Official or Except for publicly owned vehicles that provide service beyond the agency's jurisdiction, official, publicly owned, emergency, or military vehicles may not be required to pay 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.
 - 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.
4. 5. 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.

¹⁵³ **SECTION 4. AMENDMENT.** Subsection 1 of section 39-12-05.3 of the North Dakota Century Code, effective after July 31, 2003, is amended and reenacted as follows:

1. With a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle. On axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed ~~seventeen~~ nineteen thousand pounds [~~7744.07~~ 8618.26 kilograms] per axle, with a maximum of thirty-four thousand pounds [15422.14 kilograms] gross weight on a tandem axle and a maximum of forty-eight thousand pounds [21772.32 kilograms] gross weight on any grouping of three or more axles. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.

SECTION 5. AMENDMENT. Section 39-12-08 of the North Dakota Century Code is amended and reenacted as follows:

39-12-08. Penalty for violation of chapter. Any person violating any of the provisions of sections 39-12-04, 39-12-05, or 39-12-06, ~~or 39-12-09~~ must be assessed a fee of twenty dollars. Any person violating any other provision of this chapter, for which a specific penalty is not provided, must be assessed a fee of ten dollars.

SECTION 6. AMENDMENT. Section 39-12-09 of the North Dakota Century Code is amended and reenacted as follows:

39-12-09. Unlawful to violate provisions governing size, weight, or construction of vehicles - Size and weight specified in this chapter lawful through state - Penalty. It is unlawful for any person to drive or move, or for the

¹⁵³ Section 39-12-05.3 was also amended by section 1 of Senate Bill No. 2407, chapter 332.

owner to cause or knowingly to permit to be driven or moved, on any highway, ~~any vehicle or vehicles of a size or weight exceeding the limitations stated in this chapter,~~ or any vehicle or vehicles which are not constructed as required in this chapter nor according to the rules and regulations of the director adopted pursuant to the provisions of this chapter. The maximum size and weight of vehicles specified in this chapter are lawful throughout this state, except as they may be limited by virtue of specifications made pursuant to the other provisions of this chapter. Any person who violates any of the provisions of this section must be assessed a fee of twenty dollars.

SECTION 7. AMENDMENT. Section 39-12-17 of the North Dakota Century Code is amended and reenacted as follows:

39-12-17. Trial - Charges. At the trial of the action, the court shall hear testimony concerning the facts and if it is found that such vehicle or vehicles were moved upon the highways, streets, or roads of this state at a weight in excess of the limitations imposed under the provisions of section 39-12-03 or as limited by the provisions of section 39-12-05, charges for the extraordinary use of the highways, streets, or roads must be assessed as follows:

1. The storage charges and costs of the action must be assessed; and
2. An additional charge must be assessed as follows:
 - a. ~~One cent per pound [453.59 grams] for each pound [453.59 grams] of weight in excess of the legal limit, up to three thousand pounds [1360.77 kilograms] of excess weight;~~
 - b. ~~Four cents per pound [453.59 grams] for each pound [453.59 grams] which exceeds the legal limit by over three thousand pounds [1360.77 kilograms] but is less than five thousand pounds [2267.96 kilograms] of excess;~~
 - c. ~~Eight cents per pound [453.59 grams] for each pound [453.59 grams] which exceeds the legal limit by over five thousand pounds [2267.96 kilograms] but is not more than ten thousand pounds [4535.92 kilograms];~~
 - d. ~~Ten cents per pound [453.59 grams] for each pound [453.59 grams] which exceeds the legal limit by over ten thousand pounds [4535.92 kilograms] but is less than twenty thousand pounds [9071.84 kilograms] of excess weight; and~~
 - e. ~~Twenty cents per pound [453.59 grams] for each pound [453.59 grams] which exceeds the legal limit by more than twenty thousand pounds [9071.84 kilograms].~~

1 to 1,000 pounds [453.59 kilograms] of excess weight = \$20

1,001 to 2,000 pounds [454.05 to 907.18 kilograms] of excess weight = \$40

2,001 to 3,000 pounds [907.64 to 1360.78 kilograms] of excess weight = \$60

3,001 to 4,000 pounds [1361.23 to 1814.37 kilograms] of excess weight = \$140

4,001 to 5,000 pounds [1814.82 to 2267.96 kilograms] of excess weight = \$220

5,001 to 6,000 pounds [2268.41 to 2721.55 kilograms] of excess weight = \$305

6,001 to 7,000 pounds [2722.01 to 3175.14 kilograms] of excess weight = \$380

7,001 to 8,000 pounds [3175.60 to 3628.74 kilograms] of excess weight = \$495

8,001 to 9,000 pounds [3629.19 to 4082.33 kilograms] of excess weight = \$575

9,001 to 10,000 pounds [4082.78 to 4535.92 kilograms] of excess weight = \$655

10,001 to 11,000 pounds [4536.37 to 4989.51 kilograms] of excess weight = \$1,100

11,001 to 12,000 pounds [4989.97 to 5443.10 kilograms] of excess weight = \$1,200

12,001 to 13,000 pounds [5443.56 to 5896.70 kilograms] of excess weight = \$1,300

13,001 to 14,000 pounds [5897.15 to 6350.29 kilograms] of excess weight = \$1,680

14,001 to 15,000 pounds [6350.74 to 6803.88 kilograms] of excess weight = \$1,800

15,001 to 16,000 pounds [6804.33 to 7257.47 kilograms] of excess weight = \$1,920

16,001 to 17,000 pounds [7257.93 to 7711.06 kilograms] of excess weight = \$2,550

17,001 to 18,000 pounds [7711.52 to 8164.66 kilograms] of excess weight = \$2,700

18,001 to 19,000 pounds [8165.11 to 8618.25 kilograms] of excess weight = \$2,850

19,001 to 20,000 pounds [8618.70 to 9071.84 kilograms] of excess weight = \$3,000

20,001 to 21,000 pounds [9072.29 to 9525.43 kilograms] of excess weight = \$4,200

21,001 to 22,000 pounds [9525.89 to 9979.02 kilograms] of excess weight = \$4,400

22,001 to 23,000 pounds [9979.48 to 10432.62 kilograms] of excess weight = \$4,600

23,001 to 24,000 pounds [10433.07 to 10886.21 kilograms] of excess weight = \$4,800

24,001 to 25,000 pounds [10886.66 to 11339.80 kilograms] of excess weight = \$5,000

25,001 to 26,000 pounds [11340.25 to 11793.40 kilograms] of excess weight = \$5,200

26,001 to 27,000 pounds [11793.86 to 12246.99 kilograms] of excess weight = \$5,400

27,001 to 28,000 pounds [12247.45 to 12700.59 kilograms] of excess weight = \$5,600

28,001 to 29,000 pounds [12701.04 to 13154.18 kilograms] of excess weight = \$5,800

29,001 to 30,000 pounds [13154.63 to 13607.77 kilograms] of excess weight = \$6,000

An additional charge of \$200 for every 1,000-pound [453.59-kilogram] increase over 30,000 pounds [13607.77 kilograms] consistent with the above formula.

Approved April 16, 2003

Filed April 17, 2003

CHAPTER 320

HOUSE BILL NO. 1322

(Representatives Weiler, F. Klein, Wald)
(Senators Cook, Dever, Freborg)

CONSTRUCTION ZONE SPEED LIMIT VIOLATIONS

AN ACT to amend and reenact subsection 12 of section 39-06.1-06 of the North Dakota Century Code, relating to the fees for a violation of a highway construction zone speed limit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁴ **SECTION 1. AMENDMENT.** Subsection 12 of section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

12. For a violation of a school zone speed limit under subdivision b of subsection 1 of section 39-09-02, ~~of a highway construction zone speed limit under subsection 2 of section 39-09-02,~~ or, notwithstanding subsection 2 of section 40-05-06 or section 40-05.1-06, of an ordinance in a city or home rule city for a violation of a speed limit dependent upon being on or near a school, fees for a noncriminal disposition are forty dollars for one through ten miles per hour over the posted speed; and forty dollars, plus one dollar for each additional mile per hour over ten miles per hour over the limit unless a greater fee would be applicable under this section.
13. For a violation of a highway construction zone speed limit under subsection 2 of section 39-09-02, a fee of eighty dollars for one through ten miles per hour over the posted speed; and eighty dollars plus two dollars for each mile per hour over ten miles per hour over the limit, unless a greater fee would be applicable under this section. The ~~fee~~ fee in this subsection ~~de~~ does not apply to a highway construction zone unless individuals engaged in construction are present at the time and place of the violation and the posted speed limit sign states "Minimum Fee \$40 \$80".

Approved March 31, 2003

Filed March 31, 2003

¹⁵⁴ Section 39-06.1-06 was also amended by section 2 of House Bill No. 1047, chapter 317, and section 1 of House Bill No. 1112, chapter 319.

CHAPTER 321

HOUSE BILL NO. 1439

(Representative Weiler)
(Senator Nething)

DRIVING UNDER THE INFLUENCE CONSEQUENCES

AN ACT to amend and reenact subsection 7 of section 39-06.1-10, section 39-20-04, and subsection 1 of section 39-20-04.1 of the North Dakota Century Code, relating to consequences for driving while under the influence; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁵ **SECTION 1. AMENDMENT.** Subsection 7 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

7. The period of suspension imposed for a violation of section 39-08-01 or equivalent ordinance is:
 - a. Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under eighteen one-hundredths of one percent by weight.
 - b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - c. Three hundred sixty-five days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation is for an alcohol concentration of under eighteen one-hundredths of one percent by weight.
 - d. Two years if the operator's record shows the person has at least ~~twice~~ once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight or if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation was for an alcohol concentration of at

¹⁵⁵ Section 39-06.1-10 was also amended by section 3 of House Bill No. 1394, chapter 318, and section 3 of House Bill No. 1047, chapter 317.

least eight one-hundredths of one percent by weight and under eighteen one-hundredths of one percent by weight.

- e. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation is for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

SECTION 2. AMENDMENT. Section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to testing.

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but 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 a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - b. ~~Two~~ Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - c. ~~Three~~ Four years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination ~~thereof~~ of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. A person's driving privileges are not subject to revocation under ~~this section~~ subdivision a of subsection 1 if all of the following criteria are met:
- a. ~~No~~ An administrative hearing is not held under section 39-20-05;
 - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
 - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
 - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
 - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
 - c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued; ~~and~~

- e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges; and
 - f. The person has never been convicted under section 39-08-01.
3. The court must mail a copy of an order granting a withdrawal of a guilty plea to violating section 39-08-01, or equivalent ordinance, to the director within ten days after it is ordered. Upon receipt of the order, the director shall immediately revoke the person's driving privileges as provided under this section without providing an administrative hearing.

¹⁵⁶ **SECTION 3. AMENDMENT.** Subsection 1 of section 39-20-04.1 of the North Dakota Century Code is amended and reenacted as follows:

1. After the receipt of a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least ten 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 test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's operator's license as follows:
 - a. For ninety-one days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under eighteen one-hundredths of one percent by weight.
 - b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the last violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
 - c. For three hundred sixty-five days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once

¹⁵⁶ Section 39-20-04.1 was also amended by section 5 of House Bill No. 1161, chapter 316.

previously been suspended or revoked under this chapter with the last violation or suspension for an alcohol concentration under eighteen one-hundredths of one percent by weight.

- ~~e.~~ d. For two years if the person's driving record shows that within the five years preceding the date of the arrest, the person's operator's license has ~~at least twice previously~~ once been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, ~~or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests~~ for an alcohol concentration at least eighteen one-hundredths of one percent by weight or if the person's driving record shows that within the five years preceding the date of arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests with the last violation or suspension for an alcohol concentration of under eighteen one-hundredths of one percent by weight.
- e. For three years if the operator's record shows that within five years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests and the last violation or suspension was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

SECTION 4. LEGISLATIVE COUNCIL STUDY - PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUGS OR SUBSTANCES NOT TO OPERATE VEHICLE. The legislative council shall consider studying, during the 2003-04 interim, the administrative and criminal laws of driving under the influence of intoxicating liquor, the effects of adopting and implementing a graduated penalty for offenders with a high level of blood alcohol content and repeat offenders, as well as other general deterrents to driving under the influence. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved April 23, 2003
Filed April 23, 2003

CHAPTER 322

SENATE BILL NO. 2150

(Transportation Committee)

(At the request of the Department of Transportation)

COMMERCIAL DRIVER RECORDS AND DISQUALIFICATION

AN ACT to create and enact two new sections to chapter 39-06.2 of the North Dakota Century Code, relating to furnishing driving record information and to records of imminent hazard disqualification of commercial drivers; and to amend and reenact subsection 67 of section 39-01-01 and sections 39-06.2-02 and 39-06.2-10 of the North Dakota Century Code, relating to definitions and disqualification of commercial motor vehicle operators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-06.2 of the North Dakota Century Code is created and enacted as follows:

Driving record information to be furnished. Notwithstanding any other provision of law, the director shall furnish, upon request and payment of a fee of three dollars, full information regarding the driving record of a person who has been issued a commercial driver's license to an employer or to a prospective employer if the person has given written consent to the prospective employer for this information.

SECTION 2. A new section to chapter 39-06.2 of the North Dakota Century Code is created and enacted as follows:

Imminent hazard disqualification - Records. A disqualification imposed in accordance with the provisions of 49 CFR part 383.52 relating to notification from the federal motor carrier safety administration that the driver is disqualified from driving a commercial motor vehicle and is determined to constitute an imminent hazard becomes a part of the driver's record maintained by the director.

¹⁵⁷ **SECTION 3. AMENDMENT.** Subsection 67 of section 39-01-01 of the North Dakota Century Code is amended and reenacted as follows:

67. "Schoolbus" means any a commercial motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or to or from school-related activities, or privately owned and operated for compensation for the transportation of children to or from school or to or from school-related activities used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-related events. For the purposes of chapter 39-21, "schoolbus" means any motor vehicle that is owned or leased by a public or governmental agency and used to

¹⁵⁷ Section 39-01-01 was also amended by section 1 of Senate Bill No. 2213, chapter 307, and section 2 of Senate Bill No. 2213, chapter 307.

transport primary or secondary school students to or from school or to or from school-related events, or is privately owned and operated for compensation to transport primary or secondary school students to or from school or to or from school-related events. Schoolbus does not include a bus used as a common carrier.

¹⁵⁸ **SECTION 4. AMENDMENT.** Section 39-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.
2. "Alcohol concentration" means:
 - a. The number of grams of alcohol per one hundred milliliters of blood;
 - b. The number of grams of alcohol per two hundred ten liters of breath; or
 - c. The number of grams of alcohol per sixty-seven milliliters of urine.
3. "Commercial driver's instruction permit" means a permit issued under subsection 4 of section 39-06.2-07.
4. "Commercial driver's license" means a license issued under this chapter which authorizes an individual to drive a class of commercial motor vehicle.
5. "Commercial driver's license information system" means the information system established under the Commercial Motor Vehicle Safety Act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.
6. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles designed or used to transport passengers or property:
 - a. If the gross combination weight rating is twenty-six thousand one pounds [11794 kilograms] or more provided the towed unit has a gross vehicle weight rating of more than ten thousand pounds [4536 kilograms];
 - b. If the vehicle has a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms] or such lesser rating as determined by federal regulation;

¹⁵⁸ Section 39-06.2-02 was also amended by section 4 of Senate Bill No. 2149, chapter 312.

- c. If the vehicle is designed to transport sixteen or more passengers, including the driver; or
 - d. If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 CFR part 172, subpart F.
7. "Controlled substance" means any substance so classified under section 802(6) of the Controlled Substances Act [21 U.S.C. 802(6)], and includes all substances listed on schedules I through V, of 21 CFR part 1308, as they may be revised from time to time.
 8. "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
 9. "Disqualification" means a withdrawal of the privilege to drive a commercial motor vehicle.
 10. "Drive" means to drive, operate, or be in physical control of a motor vehicle.
 11. "Driver" means any person who drives, operates, or is in physical control of a commercial motor vehicle, or who is required to hold a commercial driver's license.
 12. "Driver's license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle.
 13. "Drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving, and includes any controlled substance.
 14. "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.
 15. "Fatality" means the death of a person as a result of a motor vehicle accident.
 - ~~16.~~ 16. "Felony" means any offense under state or federal law which is punishable by death or imprisonment for a term exceeding one year.
 - ~~17.~~ 17. "Foreign jurisdiction" means any jurisdiction other than a state of the United States.
 - ~~18.~~ 18. "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single or a combination (articulated) vehicle, or registered gross weight, whichever is greater. The gross vehicle weight rating of a combination (articulated) vehicle (commonly referred to as the "gross combination weight rating") is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of the towed unit or units.

- ~~48-~~ 19. "Hazardous materials" has the meaning as that found in section 103 of the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.].
20. "Imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.
- ~~49-~~ 21. "Motor vehicle" means every vehicle that is self-propelled, and every vehicle that is propelled by electric power obtained from overhead trolley wires but not operated upon rails, except vehicles moved solely by human power and motorized wheelchairs.
22. "Noncommercial motor vehicle" means a motor vehicle or combination of motor vehicles not defined by the term commercial motor vehicle.
- ~~20-~~ 23. "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.
- ~~24-~~ 24. "Serious traffic violation" means a conviction when operating a commercial motor vehicle of:
- a. Excessive speeding, involving a single charge of any speed fifteen miles [24.14 kilometers] per hour or more, above the posted speed limit;
 - b. Reckless driving, as defined under section 39-08-03 or local ordinance, including charges of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property, improper or erratic traffic lane changes, or following the vehicle ahead too closely; ~~or~~
 - c. A violation of any state or local law related to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident;
 - d. Driving a commercial motor vehicle without obtaining a commercial driver's license;
 - e. Driving a commercial motor vehicle without a commercial driver's license in the driver's possession. An individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay a fine for such violation, that the individual held a valid commercial driver's license on the date the citation was issued, is not guilty of this offense; or
 - f. Driving a commercial motor vehicle without the proper class of commercial driver's license or endorsement, or both, for the specific vehicle group being operated or for the passengers or type of cargo being transported.
- ~~22-~~ 25. "State" means a state of the United States or the District of Columbia.

~~23.~~ 26. "United States" means the fifty states and the District of Columbia.

SECTION 5. AMENDMENT. Section 39-06.2-10 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10. Disqualification and cancellation - ~~Penalty.~~

1. Disqualification offenses. Any person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:
 - a. Driving a commercial motor vehicle under the influence of alcohol or drugs;
 - b. Leaving the scene of an accident involving a commercial motor vehicle driven by the person in violation of section 39-08-04, 39-08-05, 39-08-07, or 39-08-09;
 - c. Using a commercial motor vehicle in the commission of any felony as defined in this chapter;
 - d. Refusal to submit to a test to determine the driver's alcohol concentration while driving a commercial motor vehicle; or
 - e. Driving or being in actual physical control of a commercial motor vehicle while the alcohol concentration of the person's blood, breath, or urine is four one-hundredths of one percent or more by weight.

If any of the above violations occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

2. A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection 1, or any combination of those offenses, arising from two or more separate incidents. Only offenses committed after July 1, 1989, may be considered in applying this subsection.
3. The director may adopt rules under section 39-06.2-14, establishing guidelines, including conditions, under which a disqualification for life under ~~subsection~~ subsections 2, 8, 10, and 12 may be reduced to a period of not less than ten years.
4. A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.
5. A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

6. Disqualification for railroad-highway grade crossing violation:
 - a. A driver who is convicted of driving a commercial motor vehicle in violation of a federal, state, or local law or regulation pertaining to any one of the following six offenses at a railroad-highway grade crossing is disqualified for the period of time specified in subdivision b:
 - (1) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;
 - (2) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;
 - (3) For drivers who are always required to stop, failing to stop before driving onto the crossing;
 - (4) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;
 - (5) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; and
 - (6) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.
 - b. Duration of disqualification for a railroad-highway grade crossing violation:
 - (1) First violation. A driver is disqualified for not less than sixty days if the driver is convicted of a first violation of a railroad-highway grade crossing violation.
 - (2) Second violation. A driver is disqualified for not less than one hundred twenty days if, during any three-year period, the driver is convicted of a second railroad-highway grade crossing violation in separate incidents.
 - (3) Third or subsequent violation. A driver is disqualified for not less than one year if, during any three-year period, the driver is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.
7. For a first conviction of driving while under the influence of alcohol 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 one year.
8. For a second 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.

9. For a first 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 one year.
10. For a second 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.
11. For a first 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 one year.
12. For a second 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.
13. For a conviction for using a vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance while operating a commercial motor vehicle or a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for life.
14. A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of any combination of two serious traffic violations within a three-year period while operating a noncommercial motor vehicle, and either conviction results in the revocation, cancellation, or suspension of an operator's license, including a commercial driver's license.
15. A person is disqualified from driving a commercial motor vehicle for a period of not less than one hundred twenty days if convicted of any combination of three or more serious traffic violations within a three-year period while operating a noncommercial motor vehicle, and any of the convictions results in the revocation, cancellation, or suspension of an operator's license, including a commercial driver's license.
16. Notice and hearing. Prior to suspending, revoking, or disqualifying a driver under this section, the director must provide the driver with notice of opportunity for hearing, in accordance with section 39-06-33, and the hearing requested must be held in accordance with section 39-06-33.
- 8- 17. After suspending, revoking, or canceling a commercial driver's license, the director shall update the director's records to reflect that action within ten days. After suspending, revoking, or canceling a nonresident commercial driver's privileges, the director shall notify the licensing authority of the state that issued the commercial driver's license or commercial driver's instruction permit within ten days.

CHAPTER 323

HOUSE BILL NO. 1191

(Representatives Carlisle, R. Kelsch, Maragos)
(Senators Lyson, Robinson, Stenehjem)

DRUG COURT PROGRAM

AN ACT to amend and reenact section 39-08-01 of the North Dakota Century Code, relating to the drug court program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁵⁹ **SECTION 1. AMENDMENT.** Section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

39-08-01. (~~Effective through July 31, 2003~~) Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
 - a. That person has an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.
 - b. That person is under the influence of intoxicating liquor.
 - c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
 - d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.

The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

¹⁵⁹ Section 39-08-01 was also amended by section 2 of House Bill No. 1161, chapter 316.

2. A person violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.
3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court.
4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection. For purposes of this subsection, unless the context otherwise requires, "drug court program" means a district court-supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug courts and the drug court program.
 - a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - b. For a second offense within five years, the sentence must include at least five days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed treatment program.
 - e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an offense subject to subdivision a or b. If the offense is subject to subdivision c or d, the district court may

suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the defendant is found to be in need of alcohol and substance abuse treatment and rehabilitation, the district court may order the defendant placed under the supervision and management of the department of corrections and rehabilitation and is subject to the conditions of probation under section 12.1-32-07. The district court shall require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the drug court program as a condition of probation in accordance with rules adopted by the supreme court. If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with this subsection.

- f. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this subsection.
 - g. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section.
5. As used in subdivision b of subsection 4, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention in which the defendant is tested at least twice daily for the consumption of alcohol. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation.

(Effective after July 31, 2003) Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.

4. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
 - a. That person has an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.

- b. That person is under the influence of intoxicating liquor.
- c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
- d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.

The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

- 2. A person violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.
- 3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court.
- 4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
 - a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - b. For a second offense within five years, the sentence must include at least five days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
 - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.

- d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively and a fine of one thousand dollars.
 - e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section ~~12.1-32-02~~.
 - f. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this subsection.
 - g. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section.
5. As used in subdivision b of subsection 4, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention in which the defendant is tested at least twice daily for the consumption of alcohol. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation.

Approved March 27, 2003
Filed March 27, 2003

CHAPTER 324

HOUSE BILL NO. 1238

(Representatives Mueller, Metcalf, Severson)
(Senators Erbele, Taylor)

DRIVING WITHOUT LIABILITY INSURANCE

AN ACT to amend and reenact subsection 1 of section 39-08-20 of the North Dakota Century Code, relating to driving without liability insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁰ **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 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 court costs 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 suspended. A person convicted for a second or subsequent violation of driving without liability

¹⁶⁰ Section 39-08-20 was also amended by section 7 of House Bill No. 1088, chapter 266.

insurance within an eighteen-month period must be fined at least three hundred dollars which may not be suspended.

Approved March 31, 2003

Filed March 31, 2003

CHAPTER 325

HOUSE BILL NO. 1046

(Legislative Council)
(Judiciary B Committee)

SPEED LIMITS

AN ACT to amend and reenact section 39-09-02 of the North Dakota Century Code, relating to speed limitations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶¹ **SECTION 1. AMENDMENT.** Section 39-09-02 of the North Dakota Century Code is amended and reenacted as follows:

39-09-02. Speed limitations.

1. Subject to the provisions of section 39-09-01 and except in those instances where a lower speed is specified in this chapter, it presumably is lawful for the driver of a vehicle to drive the same at a speed not exceeding:
 - a. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] of a grade crossing of any steam, electric, or street railway when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last two hundred feet [60.96 meters] of the driver's approach to such crossing, the driver does not have a clear and uninterrupted view of such railway crossing and of any traffic on such railway for a distance of four hundred feet [121.92 meters] in each direction from such crossing.
 - b. Twenty miles [32.19 kilometers] an hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours, unless a lower speed is designated or posted by local authorities.
 - c. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] and in traversing an intersection of highways when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last fifty feet [15.24 meters] of the driver's approach to such intersection, the driver does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the highways entering such intersection for a distance of two hundred feet [60.96 meters] from such intersection.

¹⁶¹ Section 39-09-02 was also amended by section 6 of House Bill No. 1012, chapter 12, and section 6 of House Bill No. 1047, chapter 317.

- d. Twenty miles [32.19 kilometers] an hour when the driver's view of the highway ahead is obstructed within a distance of one hundred feet [30.48 meters].
 - e. Twenty-five miles [40.23 kilometers] an hour on any highway in a business district or in a residence district or in a public park, unless a different speed is designated and posted by local authorities.
 - f. Fifty-five miles [88.51 kilometers] an hour on gravel, dirt, or loose surface highways, ~~and on paved two-lane highways if there is no speed limit posted or if within the time period of one-half hour after sunset to one-half hour before sunrise,~~ unless otherwise permitted, restricted, or required by conditions.
 - g. Sixty-five miles [104.61 kilometers] an hour on paved two-lane highways ~~if within the time period of one-half hour before sunrise to one-half hour after sunset and if posted for that speed,~~ and on paved and divided multilane highways, unless otherwise permitted, restricted, or required by conditions.
 - h. Seventy miles [112.65 kilometers] an hour on access-controlled, paved and divided, multilane interstate highways, unless otherwise permitted, restricted, or required by conditions.
2. The director may designate and post special areas of state highways where lower speed limits apply.
 3. Except as provided by law, it is unlawful for any person to drive a vehicle upon a highway at a speed that is unsafe or at a speed exceeding the speed limit prescribed by law or established pursuant to law.
 4. In charging a violation of the provisions of this section, the complaint must specify the speed at which the defendant is alleged to have driven and the speed which this section prescribes is prima facie lawful at the time and place of the alleged offense.

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

Approved March 20, 2003
Filed March 20, 2003

CHAPTER 326

HOUSE BILL NO. 1316

(Representatives Severson, Devlin, Froseth, Porter, Uglem)
(Senator Krebsbach)

EMERGENCY VEHICLE AIRHORNS

AN ACT to amend and reenact section 39-10-03 of the North Dakota Century Code, relating to emergency vehicles.

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 ~~audible signal by siren or when giving~~ adequate warning by use of a flashing red or combination red and white lights ~~which 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.
 - 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].

3. No emergency vehicle may display or permit to be displayed any red lamp except when operated on official business.
4. Repealed 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 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 27, 2003

Filed March 28, 2003

CHAPTER 327**SENATE BILL NO. 2342**

(Senators Krebsbach, Espegard, Robinson)
(Representatives DeKrey, R. Kelsch)

ELECTRONIC LIGHTING DEVICE DISPLAY

AN ACT to create and enact a new subsection to section 39-10-07.2 of the North Dakota Century Code, relating to the display of an electronic lighting device.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 39-10-07.2 of the North Dakota Century Code is created and enacted as follows:

This section does not prohibit the use of portable battery powered warning devices emitting a flashing red light placed upon a highway to alert oncoming traffic to a disabled or stopped motor vehicle.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 328

SENATE BILL NO. 2301

(Senator Andrist)

RAILROAD CROSSING OUT-OF-SERVICE SIGNS

AN ACT to amend and reenact section 39-10-43 of the North Dakota Century Code, relating to the type of sign that may be placed at an out-of-service railroad grade crossing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-10-43 of the North Dakota Century Code is amended and reenacted as follows:

39-10-43. Certain vehicles must stop at all railroad grade crossings.

1. The driver of a bus carrying passengers, or of any schoolbus, or of any vehicle carrying any chlorine, empty or loaded cargo tank vehicles used to transport dangerous articles or any liquid having a flashpoint below two hundred degrees Fahrenheit [93.33 degrees Celsius], cargo tank vehicles transporting a commodity having a temperature above its flashpoint at the time of loading, certain cargo tank vehicles transporting commodities under special permits issued by the hazardous materials regulations board, and every motor vehicle which must have the following placards: "explosives", "poison", "flammable oxidizers", "compressed gas", "corrosives", "flammable gas", "radioactive", or "dangerous", before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet [15.24 meters] but not less than fifteen feet [4.57 meters] from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train and may not proceed until the driver can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for manually changing gears while traversing such crossing and the driver may not manually shift gears while crossing the track or tracks.
2. No stop need be made at any such crossing at which traffic is controlled by a police officer. For the purposes of this section, a United States marshal must be considered a police officer.
3. No stop need be made at a crossing that the director has designated as an out-of-service crossing and which is clearly marked by signs bearing the words "Tracks out of service" or "Exempt" in conspicuous places on each side of the crossing.
4. The designation must be limited to use at crossings where track has been abandoned or its use discontinued.
5. The director shall notify the road authority and any railway company of a crossing under the jurisdiction of that railway company which the

director has designated as an out-of-service crossing under this section and the road authority shall erect signs bearing the words "Tracks out of service" or "Exempt" in conspicuous places on each side of the crossing. ~~The railway company shall remove the crossbucks.~~

6. All signs must conform to the manual on uniform traffic control devices as provided under section 39-13-06.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 329**HOUSE BILL NO. 1319**

(Representatives Severson, Delmore, Porter)
(Senators Erbele, Klein, Krebsbach)

EMERGENCY VEHICLE FOLLOWING PROHIBITED

AN ACT to amend and reenact section 39-10-57 of the North Dakota Century Code, relating to following or stopping by an emergency vehicle.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-10-57 of the North Dakota Century Code is amended and reenacted as follows:

39-10-57. Following fire apparatus emergency vehicle prohibited - Stopping by emergency vehicle. The driver of ~~any a~~ a vehicle other than one on official business may not follow ~~any fire apparatus traveling in response to a fire alarm~~ closer than five hundred feet [152.4 meters] ~~or behind an emergency vehicle displaying the appropriate light for that vehicle in an emergency.~~ A driver of a vehicle other than one on official business may not stop ~~such the~~ vehicle within ~~five two~~ two hundred feet [~~152.4~~ 60.96 meters] of any ~~fire apparatus emergency vehicle~~ stopped in answer to a ~~fire alarm~~ 911 emergency.

Approved March 19, 2003
Filed March 19, 2003

CHAPTER 330

HOUSE BILL NO. 1220

(Representatives Grande, Hawken, Meier, Potter)
(Senators Christenson, J. Lee)

FLEEING LAW OFFICER PENALTY

AN ACT to amend and reenact section 39-10-71 of the North Dakota Century Code, relating to the driver of a motor vehicle fleeing or attempting to elude a law enforcement officer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. Any driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years. An individual who violates this section while fleeing after or in the commission of a felony is guilty of a class C felony.
2. A signal complies with this section if the signal is perceptible to the driver and:
 4. a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
 2. b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform and prominently displays the officer's badge of office.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 331

HOUSE BILL NO. 1062

(Representatives Metcalf, Kerzman, Severson, Weisz)
(Senators Nichols, Dever)

FARM IMPLEMENT MOVEMENT ON HIGHWAYS

AN ACT to amend and reenact subsection 1 of section 39-12-04 of the North Dakota Century Code, relating to width limits and the movement of implements of husbandry.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶² **SECTION 1. AMENDMENT.** Subsection 1 of section 39-12-04 of the North Dakota Century Code is amended and reenacted as follows:

1. A total outside width, including load thereon, of eight feet six inches [2.59 meters]. This limitation does not apply to:
 - a. Construction and building contractors' equipment and vehicles used to move such equipment which does not exceed ten feet [3.05 meters] in width when being moved by contractors or resident carriers.
 - b. Implements of husbandry being moved by resident farmers, ranchers, governmental entities, dealers, or manufacturers between sunrise and sunset. Furthermore, the limitation does not apply to implements of husbandry being moved between sunset and sunrise by resident farmers, ranchers, governmental entities, dealers, or manufacturers on public state, county, or township highway systems other than interstate highway systems.
 - c. Hay in the stack or bale being moved along the extreme right edge of a roadway between sunrise and sunset by someone other than a commercial mover.
 - d. Commercial movement of haystacks or hay bales with vehicles designed specifically for hauling hay, commercial movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, whether operating under their own power or being transported by another vehicle, commercial movement of portable grain cleaners, and the commercial movement of hay grinders, which may be moved on the highway after obtaining a seasonal permit issued by the highway patrol. The highway patrol shall issue seasonal permits that are valid during daylight hours on any day of the week, or that are valid at all times for the movement of self-propelled fertilizer spreaders and self-propelled agricultural

¹⁶² Section 39-12-04 was also amended by section 3 of Senate Bill No. 2213, chapter 307, and section 2 of House Bill No. 1261, chapter 310.

chemical applicators, to any commercial entity otherwise qualified under this subdivision. Self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators operating under their own power between sunset and sunrise must display vehicle hazard warning signal lamps as described in subsection 3 of section 39-21-19.1. The seasonal permit is in lieu of registration requirements for the permit period. No seasonal permit may be issued, unless proof of financial responsibility in a minimum of three hundred thousand dollars is filed and the appropriate permit fee is paid. The seasonal permit may also be issued for hauling hay bales with vehicles or vehicle combinations other than those designed specifically for hauling haystacks. This seasonal permit, however, will not be in lieu of registration requirements. All permit fees must be deposited in the state highway distribution fund.

- e. Safety devices that the highway patrol determines are necessary for the safe and efficient operation of motor vehicles may not be included in the calculation of width.
- f. Any nonload carrying safety appurtenance as determined by the highway patrol which extends no more than three inches [7.62 centimeters] from each side of a trailer is excluded from the measurement of trailer width. The width of a trailer is measured across the sidemost load carrying structures, support members, and structural fasteners.
- g. The highway patrol may adopt reasonable rules for those vehicles exempted from the width limitations as provided for in this subsection.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 332

SENATE BILL NO. 2407

(Senators O'Connell, Fairfield, Trenbeath)
(Representatives Hunskor, Nelson, Weisz)

VEHICLE WEIGHT LIMITATIONS

AN ACT to amend and reenact section 39-12-05.3 of the North Dakota Century Code, relating to weight limitations on vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶³ **SECTION 1. AMENDMENT.** Section 39-12-05.3 of the North Dakota Century Code is amended and reenacted as follows:

39-12-05.3. (Effective through July 31, 2003) Weight limitations for vehicles on highways other than the interstate system.

1. A person may not operate on a highway that is not part of the interstate system any vehicle with a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle. On axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed seventeen thousand pounds [7711.07 kilograms] per axle, with a maximum of forty-eight thousand pounds [21772.32 kilograms] gross weight on any grouping of three or more axles. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.
2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, a person may not operate on a highway that is not part of the interstate system any vehicle the gross weight of which exceeds that determined by the formula of:

$$W = 500 \left(\frac{LN}{N-1} + 12N + 36 \right)$$

where W equals the maximum gross weight in pounds on any vehicle or combination of vehicles; L equals distance in feet between the two extreme axles of any vehicle or combination of vehicles; and N equals the number of axles of any vehicle or combination of vehicles under consideration. The gross weight on state highways may not exceed one

¹⁶³ Section 39-12-05.3 was also amended by section 4 of House Bill No. 1112, chapter 319.

hundred five thousand five hundred pounds [47854.00 kilograms] unless otherwise posted and on all other highways the gross weight may not exceed eighty thousand pounds [36287.39 kilograms] unless designated by local authorities for highways under their jurisdiction for gross weights not to exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. Local authorities are encouraged to assess all roads under their jurisdiction and designate the roads for the appropriate weight limits allowed under this subsection.

3. The gross weight limitations in subsections 1 and 2 do not apply to equipment the director and the state highway patrol approve for exemption. The exemption may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. For every vehicle approved for exemption the highway patrol shall issue a nontransferable permit valid for one year. The highway patrol may charge an administrative fee for the permit.
4. The director, and local authorities, as to the highways under their respective jurisdictions, may issue permits authorizing a specific motor vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The permits must provide only for the movement of agricultural products from the field of harvest to the point of initial storage site, and for the collection and transport of solid wastes, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.
5. The director, and local authorities, as to highways under their respective jurisdictions, may issue permits authorizing all vehicles carrying potatoes or sugar beets to exceed weight limitations stated in subsections 1 and 2 by ten percent during the period from July fifteenth to December first. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.
6. The gross weight limitations in subsections 1 and 2 do not apply to movement of a self-propelled fertilizer spreader if the ~~vehicle does not travel at speeds in excess of thirty miles [48.28 kilometers] per hour when loaded over one-half capacity and the gross weight of a single axle does not exceed eighty twenty-two thousand pounds [38287.39 19979.03 kilograms]~~ and does not exceed five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. The gross weight limitations in subsections 1 and 2 do not apply to movement of a self-propelled agricultural chemical applicator if the ~~vehicle does not travel at speeds in excess of thirty miles [48.28 kilometers] per hour when loaded over one-half capacity and the gross weight of a single axle does not exceed forty-five twenty-two thousand pounds [20444.66 19979.03 kilograms]~~ and does not exceed five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. The highway patrol shall issue a seasonal permit for the

commercial movement of vehicles exempted by this subsection. The seasonal permit issued under this subsection or under subdivision d of subsection 1 of section 39-12-04 entitles an individual with the permit to operate a vehicle as allowed by either of these provisions. A seasonal permit issued under this subsection is subject to the requirements of subdivision d of subsection 1 of section 39-12-04.

(Effective after July 31, 2003) Weight limitations for vehicles on highways other than the interstate system. A person may not operate on a highway, which is not part of the interstate system, any vehicle:

1. With a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle. On axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed seventeen thousand pounds [7711.07 kilograms] per axle, with a maximum of forty-eight thousand pounds [21772.32 kilograms] gross weight on any grouping of three or more axles. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.
2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, the gross weight of which exceeds that determined by the formula of:

$$W = 500 \frac{(LN + 12N + 36)}{N-1}$$

where W equals the maximum gross weight in pounds on any vehicle or combination of vehicles; L equals distance in feet between the two extreme axles of any vehicle or combination of vehicles; and N equals the number of axles of any vehicle or combination of vehicles under consideration. The gross weight on state highways may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms] unless otherwise posted and on all other highways the gross weight may not exceed eighty thousand pounds [36287.39 kilograms] unless designated by local authorities for highways under their jurisdiction for gross weights not to exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. Local authorities are encouraged to assess all roads under their jurisdiction and designate the roads for the appropriate weight limits allowed under this subsection.

3. The gross weight limitations in subsections 1 and 2 do not apply to equipment the director and the state highway patrol approve for exemption. The exemption may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. For every vehicle approved for exemption the highway patrol shall issue a nontransferable permit valid for one year. The highway patrol may charge an administrative fee for the permit.
4. The director, and local authorities, as to the highways under their respective jurisdictions, may issue permits authorizing a specific motor

vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The permits must provide only for the movement of agricultural products from the field of harvest to the point of initial storage site, and for the collection and transport of solid wastes, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.

5. The director, and local authorities, as to highways under their respective jurisdictions, may issue permits authorizing all vehicles carrying potatoes or sugar beets to exceed weight limitations stated in subsections 1 and 2 by ten percent during the period from July fifteenth to December first. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.

Approved April 16, 2003

Filed April 16, 2003

CHAPTER 333

HOUSE BILL NO. 1255 (Representatives Dosch, Meier, Weiler) (Senator Dever)

WINDSHIELD TINTING

AN ACT to amend and reenact section 39-21-39 of the North Dakota Century Code, relating to windshield tinting.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-21-39 of the North Dakota Century Code is amended and reenacted as follows:

39-21-39. Windshield - Must be unobstructed and equipped with wipers - Tinted windows.

1. ~~Every~~ A motor vehicle must be equipped with a windshield. ~~No person~~ An individual may not drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows which obstructs the driver's clear view of the highway or any intersecting highway.
2. The windshield on ~~every~~ a motor vehicle must be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which must be ~~so~~ constructed as to be controlled or operated by the driver of the vehicle.
3. ~~Every~~ The windshield wiper upon a motor vehicle must be maintained in good working order.
4. ~~A person~~ An individual may not operate a motor vehicle with any object, material, or tinting displayed, affixed, or applied on the front windshield or any window unless the object, material, or tinting in conjunction with the ~~window or~~ windshield upon which it is displayed, affixed, or applied has a light transmittance of at least seventy percent or the object, material, or tinting in conjunction with a window other than the windshield upon which it is displayed, affixed, or applied has a light transmittance of at least fifty percent. This subsection does not apply to windows behind the operator if the motor vehicle is equipped with outside mirrors on both sides that meet the requirements of section 39-21-38; ~~nor to front side windows displaying transparent sunscreening material as authorized by competent medical authority.~~

Approved April 18, 2003
Filed April 18, 2003

CHAPTER 334

HOUSE BILL NO. 1193

(Representative Klemin)
(Senator Trenbeath)

SAFETY BELT USE

AN ACT to amend and reenact section 39-21-41.4 of the North Dakota Century Code, relating to the use of safety belts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-21-41.4 of the North Dakota Century Code is amended and reenacted as follows:

39-21-41.4. Use of safety belts required in certain motor vehicles - Enforcement - Evidence. Subject to the limitations of this section and section 39-21-41.5, a driver may not operate upon a highway a motor vehicle designed for carrying fewer than eleven passengers, which was originally manufactured with safety belts unless each front seat occupant is wearing a properly adjusted and fastened safety belt. This section does not apply to a child in a child restraint or seatbelt in accordance with section 39-21-41.2; to drivers of implements of husbandry; to operators of farm vehicles as defined in subsection 5 of section 39-04-19; to rural mail carriers while on duty delivering mail; to an occupant with a medical or physically disabling condition that prevents appropriate restraint in a safety belt, if a qualified physician states in a signed writing the nature of the condition and the reason restraint is inappropriate; or when all front seat safety belts are in use by other occupants. A physician who, in good faith, provides a statement that restraint would be inappropriate is not subject to civil liability. A violation for not wearing a safety belt under this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 335

HOUSE BILL NO. 1359

(Representatives Thorpe, DeKrey, M. Klein)
(Senators O'Connell, Seymour, Trenbeath)

COLLECTOR MOTOR VEHICLE AUCTIONS

AN ACT to create and enact a new section to chapter 39-22 of the North Dakota Century Code, relating to collector motor vehicle auctions; and to amend and reenact section 39-22-21 of the North Dakota Century Code, relating to the sale of consignment vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

Collector motor vehicle auctions.

1. A person may engage in the business of conducting a collector motor vehicle auction without obtaining a motor vehicle dealer's license as otherwise required by this chapter if:
 - a. Each motor vehicle sold or offered for sale at the auction is a collector, antique, or special interest vehicle;
 - b. The sale is open to the public;
 - c. The person conducts no more than two collector motor vehicle auctions per year;
 - d. The site of the auction is located on property zoned or otherwise approved for this purpose by the appropriate zoning authority; and
 - e. The auction lasts no more than two days.
2. Collector motor vehicle auctions that comply with this section may be conducted any day of the week and sections 39-22-07.1 and 39-22-20 do not apply to motor vehicle dealers who participate in collector motor vehicle auctions.
3. A collector motor vehicle is a vehicle that is at least twenty-five years old; an antique motor vehicle is a vehicle that is at least forty years old; and a special interest vehicle is a vehicle that has an appreciating value because of rarity, originality, or limited production of an anniversary edition.

SECTION 2. AMENDMENT. Section 39-22-21 of the North Dakota Century Code is amended and reenacted as follows:

39-22-21. Consignment vehicles - Penalty. 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. ~~Any~~ 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 a third or subsequent violation of this section occurs within five years of the first violation.

Approved March 17, 2003
Filed March 17, 2003

CHAPTER 336

SENATE BILL NO. 2162

(Senator J. Lee)

SNOWMOBILE REGISTRATION FEES

AN ACT to amend and reenact section 39-24-03 of the North Dakota Century Code, relating to snowmobile registration fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-24-03 of the North Dakota Century Code is amended and reenacted as follows:

39-24-03. Registration - Application - Issuance - Fees - Renewal.

1. Application for registration must be made to the department in a form as the department shall prescribe and furnish and must state the name and address of every owner of the snowmobile and be signed by at least one owner. A copy of the application must be carried on the person when operating and shall serve as evidence of registration for a period of not more than thirty days from the date of application.
2. Upon receipt of the application and the appropriate fee ~~as hereinafter provided~~, the department shall register a snowmobile ~~must be registered~~ and assign a registration number and a certificate of registration assigned. The registration number must be at least one and one-half inches [3.81 centimeters] in height and of a reflectorized material and must be securely affixed on each side of the forward half of the snowmobile in ~~such a~~ position as to provide clear legibility for identification. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner. The fee for registration of each snowmobile must be ~~three~~ five dollars for a any portion of the registration period and the registration period of is for two years beginning October first of each odd-numbered year effective October 1, 1991. To implement this section, on January 1, 1992, the department shall register each snowmobile registered before July 1, 1991, for a one-time period of twenty-one months. The fee for initial registration of each snowmobile registered on and after October first of the second year of the two-year registration period must also be three dollars. The fee for a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible may not exceed ~~three~~ five dollars. In addition, in each year that fees are collected for the unsatisfied judgment fund there must be assessed a fee of one dollar per year for each snowmobile registered, which must be placed in the unsatisfied judgment fund. For each snowmobile registered under the provisions of this chapter, there must be assessed a snowmobile trail tax in the amount of ~~seventeen~~ thirty-five dollars.
3. Every owner of a snowmobile shall renew the registration in a manner as the department shall prescribe, upon payment of the same registration fees provided in this section.

4. Upon application for registration as prescribed in this section, any snowmobile dealer as defined in section 39-24-01 must be issued registration numbers distinctively marked as dealer's registration numbers upon payment of the appropriate fee as prescribed in this section. The dealer's registration numbers must be used only on snowmobiles owned by the dealership.

Approved March 19, 2003
Filed March 19, 2003

CHAPTER 337**HOUSE BILL NO. 1292**

(Representatives Nelson, Delmore, Headland, Hunskor)
(Senators Heitkamp, Trenbeath)

SNOWMOBILE TRAIL ACCESS FEE

AN ACT to amend and reenact sections 39-24-04 and 39-24-11 of the North Dakota Century Code, relating to a snowmobile access fee; to provide a penalty; to provide an appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-24-04 of the North Dakota Century Code is amended and reenacted as follows:

39-24-04. Exemption from registration - Exemption from fees.

1. A registration number must be issued without the payment of a fee for snowmobiles owned by the state of North Dakota or any of its political subdivisions upon application for the registration.
2. No registration or fees may be required of:
 - a. Snowmobiles owned and used by the United States or another state or its political subdivisions.
 - b. Snowmobiles registered in a country other than the United States and temporarily used within this state.
 - c. Snowmobiles validly licensed in another state and which have not been within this state for more than thirty consecutive days.
 - d. Snowmobiles operated upon lands owned or leased by the snowmobile owner.
 - e. Snowmobiles incapable of speeds in excess of ten miles per hour and with an engine displacement of less than one hundred cubic centimeters.
3. If a snowmobile is exempt from registration under subdivision b or c of subsection 2 of this section, the owner is required to display on the snowmobile a decal received upon payment of a fifteen dollar per year trail access fee. Fees collected under this subsection must be deposited in the state snowmobile fund.

¹⁶⁴ **SECTION 2. AMENDMENT.** Section 39-24-11 of the North Dakota Century Code is amended and reenacted as follows:

39-24-11. Penalties. Any person who violates subdivision b or g of subsection 5 of section 39-24-09 is guilty of a class B misdemeanor. Any person who violates subdivision c of subsection 5 of section 39-24-09 is guilty of an infraction or a class B misdemeanor as determined by section 39-24.1-07. Any person who violates subsection 11 of section 39-24-09 is guilty of a class B misdemeanor and must be assessed a fine of at least one hundred dollars. Any person who violates any other provision of section 39-24-09 must be assessed a fee of twenty dollars. Any person, unless specifically exempted, who fails to register or fails to display a decal as required by ~~section~~ sections 39-24-02 and 39-24-04 must be assessed a fee of fifty dollars. If the person provides proof of registration after the violation, the fee may be reduced by one-half. Any person who violates any other provision of this chapter for which a specific penalty is not provided must be assessed a fee of ten dollars.

SECTION 3. APPROPRIATION. There is appropriated out of moneys in the state snowmobile fund in the state treasury, not otherwise appropriated, the sum of \$4,995, or so much of the sum as may be necessary, to the parks and recreation department for the purposes of establishing and administering the decal program for snowmobiles registered in another state or country, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 4. EFFECTIVE DATE. Section 1 of this Act becomes effective on August 1, 2005.

Approved April 21, 2003
Filed April 21, 2003

¹⁶⁴ Section 39-24-11 was also amended by section 2 of Senate Bill No. 2080, chapter 338.

CHAPTER 338

SENATE BILL NO. 2080

(Transportation Committee)

(At the request of the Parks and Recreation Department)

SNOWMOBILE OPERATION NEAR INTERSTATE HIGHWAY

AN ACT to amend and reenact sections 39-24-09 and 39-24-11 of the North Dakota Century Code, relating to snowmobile operation within the right of way of an interstate highway; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-24-09 of the North Dakota Century Code is amended and reenacted as follows:

39-24-09. Rules for operation of snowmobiles.

1. No person may operate a snowmobile upon the roadway, shoulder, or inside bank or slope of any road, street, or highway in this state except as provided pursuant to this chapter. No snowmobile may be operated at any time within the right of way of any interstate highway within this state except ~~for emergency purposes~~ as provided in this section.
2. A snowmobile may make a direct crossing of a non-interstate street or highway provided:
 - a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
 - b. The snowmobile is brought to a complete stop before crossing the shoulder or main traveled way of the highway;
 - c. The driver yields the right of way to all oncoming traffic which constitutes an immediate hazard; and
 - d. In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway.
3. No snowmobile may be operated unless it is equipped with at least one headlamp, one taillamp, and brakes, all in working order, which conform to standards prescribed by rule of the director pursuant to the authority vested in the director by this code and this chapter.
4. The emergency conditions under which a snowmobile may be operated other than as provided by this chapter must be such as to render the use of an automobile impractical under such conditions at such period of time and location.

5. It is unlawful for any person to drive or operate any snowmobile in the following ways which are declared to be unsafe and a public nuisance:
 - a. At a rate of speed greater than reasonable or proper under all the surrounding circumstances.
 - b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage to such person or property.
 - c. While under the influence of intoxicating liquor or a drug as defined in section 39-24.1-01, or a combination thereof.
 - d. Without a lighted headlamp and taillamp when required for safety.
 - e. In any tree nursery or planting in a manner which damages or destroys growing stock.
 - f. Without a manufacturer-installed or equivalent muffler in good working order and connected to the snowmobile exhaust system.
 - g. Upon any private land where the private land is posted by the owner or tenant prohibiting trespassing. The name of the person posting the land must appear on each sign in legible characters. The posted signs must be readable from the outside of the land and must be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart, provided further that as to land entirely enclosed by a fence or other enclosure, posting of signs at or on all gates through the fence or enclosure constitutes a posting of all the enclosed lands.
6. It is unlawful for any person to operate a snowmobile pursuant to chapter 39-24 without having in possession a valid driver's license or permit, except as provided by section 39-24-09.1.
7. When snowmobiles are operated within the right of way of any road, street, or highway of this state pursuant to this chapter, during times or conditions that warrant the use of lights, such snowmobiles shall travel in the same direction as the direction of motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right of way traveled by the snowmobile.
8. It is unlawful for any person to operate a snowmobile within a highway right of way as defined in subsection 38 of section 24-01-01.1 between April first and November first of any year.
9. No snowmobile may be operated at any time within the right of way of any highway within this state while towing a sled, skid, or other vehicle, unless the sled, skid, or other vehicle is connected to the snowmobile by a hinged swivel and secure hitch.
10. No person under the age of eighteen years may operate, ride, or otherwise be propelled on a snowmobile unless the person wears a safety helmet meeting United States department of transportation standards.

11. A person may not operate a snowmobile, and an owner of a snowmobile may not knowingly permit the snowmobile to be operated, upon any property maintained, leased, or owned by the state parks and recreation department to which the public has a right of access for snowmobile or other vehicular use, without a policy of liability insurance which insures the person named, and any person using the snowmobile with the express or implied permission of the person named, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the snowmobile within this state, subject to the following limits, exclusive of interest and costs, with respect to each snowmobile: twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars because of injury to or destruction of property of others in any one accident. Upon request of a law enforcement officer, a person operating a snowmobile shall provide proof of liability insurance to that officer within twenty days.

12. A snowmobile may not be operated within the right of way of any interstate highway within this state except:
 - a. For emergency purposes; or
 - b. Across an interstate highway on an overpass or underpass, except where otherwise prohibited by law or by signing, provided the snowmobile crosses on the extreme right side of the overpass or underpass.

¹⁶⁵ **SECTION 2. AMENDMENT.** Section 39-24-11 of the North Dakota Century Code is amended and reenacted as follows:

39-24-11. Penalties. Any person who violates subsection 12 of section 39-24-09 must be assessed a fee of one hundred dollars. Any person who violates subdivision b or g of subsection 5 of section 39-24-09 is guilty of a class B misdemeanor. Any person who violates subdivision c of subsection 5 of section 39-24-09 is guilty of an infraction or a class B misdemeanor as determined by section 39-24.1-07. Any person who violates subsection 11 of section 39-24-09 is guilty of a class B misdemeanor and must be assessed a fine of at least one hundred dollars. Any person who violates any other provision of section 39-24-09 must be assessed a fee of twenty dollars. Any person, unless specifically exempted, who fails to register as required by section 39-24-02 must be assessed a fee of fifty dollars. If the person provides proof of registration after the violation, the fee may be reduced by one-half. Any person who violates any other provision of this chapter for which a specific penalty is not provided must be assessed a fee of ten dollars.

¹⁶⁵ Section 39-24-11 was also amended by section 2 of House Bill No. 1292, chapter 337.

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

Approved March 19, 2003

Filed March 19, 2003

MUNICIPAL GOVERNMENT

CHAPTER 339

SENATE BILL NO. 2208

(Senator Trenbeath)
(Representatives Grande, Wieland)

CITY MEETING DATES

AN ACT to amend and reenact sections 40-04.1-05, 40-08-10, and 40-09-11 of the North Dakota Century Code, relating to the meeting dates of city governing bodies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-04.1-05 of the North Dakota Century Code is amended and reenacted as follows:

40-04.1-05. Meetings - Regular, special, and for organization. The city council shall hold its regular meetings at least once a month, ~~on or before the fifteenth day of the month,~~ and may prescribe by ordinance the manner in which special meetings may be called. The city council shall establish by resolution or ordinance the date of its regular meetings. The first meeting for the organization of the city council must be held on the fourth Tuesday in June of each even-numbered year.

SECTION 2. AMENDMENT. Section 40-08-10 of the North Dakota Century Code is amended and reenacted as follows:

40-08-10. Meetings of council - Regular, special, and for organization. The city council shall hold its regular meetings at least once a month ~~on or before the fifteenth day of the month~~ on a date certain established by resolution or ordinance of the council, and may prescribe by ordinance the manner in which special meetings may be called as well as the establishment of any additional regular meetings desired. If a regular meeting falls upon a holiday, the meeting must be held upon the next business day with the same effect as if conducted upon the day appointed. All regular and special meetings must be held at a time and place designated by the city council. The first meeting for the organization of the city council must be held on the fourth Tuesday in June of each even-numbered year.

SECTION 3. AMENDMENT. Section 40-09-11 of the North Dakota Century Code is amended and reenacted as follows:

40-09-11. Meetings of board - Regular and special - Action on departmental matters. The board of city commissioners shall meet in regular meeting at least once ~~every two weeks~~ a month and at such additional times as the board, by ordinance, may establish. All regular meetings shall be held at a time and place to be designated by the board. No action of the board shall be effective unless upon a vote of a majority of a quorum of the members of such board. No final action shall be taken in any matter concerning the special department of any absent commissioner unless such business has been made a special order of the day or such action is taken at a regular meeting of the board. Special meetings may be called at any time by the president or any two members of the board to consider matters mentioned in the call of such meeting. Written notice of any special meeting shall be given to each member of the board.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 340**HOUSE BILL NO. 1056**

(Representatives Eckre, Williams, Weiler)
(Senators Thane, Heitkamp, Espegard)

CITY OWNERSHIP OF PROPERTY OUTSIDE STATE

AN ACT to amend and reenact subsection 55 of section 40-05-01 of the North Dakota Century Code, relating to ownership by a municipality of property located outside this state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁶ **SECTION 1. AMENDMENT.** Subsection 55 of section 40-05-01 of the North Dakota Century Code is amended and reenacted as follows:

55. Real and personal property. To acquire by lease, purchase, gift, condemnation, or other lawful means and to hold in its corporate name for use and control as provided by law, both real and personal property and easements and rights of way within or without the corporate limits or outside this state for all purposes authorized by law or necessary to the exercise of any power granted.

Approved March 27, 2003

Filed March 28, 2003

¹⁶⁶ Section 40-05-01 was also amended by section 3 of Senate Bill No. 2261, chapter 342, and section 1 of Senate Bill No. 2320, chapter 341.

CHAPTER 341**SENATE BILL NO. 2320**

(Senators Brown, J. Lee)
(Representative Keiser)

CITY GOVERNING BODY POWERS

AN ACT to amend and reenact subsection 75 of section 40-05-01 of the North Dakota Century Code, relating to the powers of a city governing body.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁷ **SECTION 1. AMENDMENT.** Subsection 75 of section 40-05-01 of the North Dakota Century Code is amended and reenacted as follows:

75. Encouragement of arts. To, consistent with section 54-54-01, appropriate and disburse city moneys and to accept and disburse moneys received from federal, state, county, city, or private sources for the establishment, maintenance, or encouragement of arts within the municipality city. ~~The municipality may provide matching funds before or after receipt of the moneys.~~ The authority of a municipality city under this subsection is supplemental to the authority provided in chapter 40-38.1.

Approved April 11, 2003
Filed April 14, 2003

¹⁶⁷ Section 40-05-01 was also amended by section 3 of Senate Bill No. 2261, chapter 342, and section 1 of House Bill No. 1056, chapter 340.

CHAPTER 342

SENATE BILL NO. 2261

(Senators Nething, Heitkamp, Wardner)
(Representatives Delmore, Devlin, Keiser)

LONG-TERM LEASES AND LEASEBACK TRANSACTIONS

AN ACT to create and enact a new subsection to section 6-09.4-07, a new section to chapter 15-10, a new subsection to section 40-05-01, a new section to chapter 40-34, a new section to chapter 54-01, a new section to chapter 54-17, three new subsections to section 57-02-08, a new subsection to section 61-24.5-09, and a new subsection to section 61-35-12 of the North Dakota Century Code, relating to long-term leases and leaseback transactions; to amend and reenact sections 40-11-04, 40-33-01, 40-33-02, 40-33-03, 40-33-04, and 40-34-02 of the North Dakota Century Code, relating to long-term leases and leaseback transactions; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-09.4-07 of the North Dakota Century Code is created and enacted as follows:

To do and perform any act and thing authorized by section 54-01-05.6 or 54-17-35 under, through, or by means of its officers, agents, or employees or by contracts with any person to assist the state, or any agency or institution of the state, in making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of leasing all or part of, or an undivided or other interest in, property.

SECTION 2. A new section to chapter 15-10 of the North Dakota Century Code is created and enacted as follows:

Long-term lease and leaseback transaction revenue. The board shall use revenue earned from long-term lease and leaseback transactions under chapter 54-01 for the repair and upkeep of campus buildings commonly referred to as deferred maintenance projects.

¹⁶⁸ **SECTION 3.** A new subsection to section 40-05-01 of the North Dakota Century Code is created and enacted as follows:

Lease of waterworks or sewage systems. To lease, for a term not to exceed ninety-nine years, the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto pursuant to subsection 5 of section 40-33-01 or to lease, for a term not

¹⁶⁸ Section 40-05-01 was also amended by section 1 of House Bill No. 1056, chapter 340, and section 1 of Senate Bill No. 2320, chapter 341.

to exceed ninety-nine years, any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-01.2.

SECTION 4. AMENDMENT. Section 40-11-04 of the North Dakota Century Code is amended and reenacted as follows:

40-11-04. Ordinance required for the transfer of property. Every municipality shall enact an ordinance providing for the conveyance, sale, lease, or disposal of personal and real property of the municipality. When the property to be disposed of is estimated by the governing body of the municipality to be of a value of less than two thousand five hundred dollars, the property may be sold at private sale upon the proper resolution of the governing body. In all other cases, the property may be sold only at public sale or as provided under section 40-11-04.2. This section and sections 40-11-04.1 and 40-11-04.2 do not apply to a lease by a municipality to the state, or any agency or institution of the state, of any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any real property related thereto pursuant to subsection 5 of section 40-33-01 or of any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-01.2.

SECTION 5. AMENDMENT. Section 40-33-01 of the North Dakota Century Code is amended and reenacted as follows:

40-33-01. Electric light, telephone, natural and artificial gas plants, pipelines and distribution systems and power plants - Municipalities may purchase, erect, construct, maintain, sell, or lease. Any municipality may purchase, erect, construct, operate, maintain, enlarge, improve and extend, or lease from any person, ~~firm, corporation, or limited liability company~~, or sell or lease to any person, ~~firm, corporation, or limited liability company~~:

1. Any electric light and power plant, site, buildings, and equipment thereof.
2. Any electric distribution system and equipment thereof.
3. Any electric transmission line and equipment thereof.
4. Any telephone plant, equipment, and distribution system thereof.
5. Any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto, notwithstanding any other provision of law.
6. Any heating system, gas or otherwise, and the buildings and equipment necessary to furnish heat to the public buildings of the municipality and to the inhabitants of the municipality.
7. Any natural or artificial gas pipeline transmission or distribution system or plants.

For purposes of subsection 5, the term "lease" includes any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or

from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement. A lease obligation of a municipality under subsection 5 may not exceed a term of ninety-nine years. A lease obligation of a municipality under subsection 5 does not constitute an indebtedness of the municipality, or a pledge of the full faith and credit or unlimited taxing resources of the municipality. Notwithstanding any other provision of law, a municipality may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under subsection 5. The municipality, by resolution of its governing body upon a majority vote of the members of the governing body, may accept a proposal that it determines to be in the public interest. A lease under subsection 5, and any related documents entered or to be entered, may be authorized by resolution of the governing body of the municipality.

SECTION 6. AMENDMENT. Section 40-33-02 of the North Dakota Century Code is amended and reenacted as follows:

40-33-02. Acquiring, erecting, or improving plant, system, or line without election prohibited - ~~Exception~~ Exceptions. No municipal officers may purchase, erect, substantially enlarge, improve, or extend an existing plant, or lease from others any plant, system, or line provided for in section 40-33-01, unless the proposition has been submitted by a resolution of the governing body to the qualified electors of the city at a biennial or special election called, held, and conducted upon the notice and in the manner specified by this title for the election of the governing body of the city, and has been approved by a majority of the electors voting thereon. If the cost of any enlargement, improvement, or extension will be paid out of the earnings of the plant and the cost does not exceed the sum of five thousand dollars, or if eighty per centum or more of the cost of any waterworks, mains, water system and equipment or appliances therefor is to be paid by special assessments or by the earnings of the plant or by both, the governing body is not required to submit the proposition to the electors of the city. If the improvement and facilities are to provide for a greater and more adequate water supply to meet the needs of the city for domestic use, fire protection, or for sanitation and sewage disposal, regardless of cost the governing body thereof may by resolution provide for the needed improvement and facilities in cooperation with the state or federal government, or any agency thereof, without an election if funds for such cooperation or for defraying the entire cost thereof are available in the municipal utilities fund as defined by section 40-33-10. If the lease by the city of any plant, system, or line provided for in subsection 5 of section 40-33-01 is from the state, or any agency or institution of the state, the governing body is not required to submit the proposition to the electors of the city.

SECTION 7. AMENDMENT. Section 40-33-03 of the North Dakota Century Code is amended and reenacted as follows:

40-33-03. Sale or lease of plant, system, or line - Offer or written proposition - Election - Proceeds. No municipality shall sell any municipal plant, system, or line, nor lease the same, or any substantial part thereof, or interest therein, to any person, firm, corporation, or limited liability company unless the person, firm, corporation, or limited liability company shall have filed in the office of the auditor of the municipality a complete written offer or proposition, nor unless a majority of the qualified electors of the municipality shall have voted in favor of accepting the offer or proposition at an election called, held, and conducted as specified in section 40-33-02. A copy of the offer or proposition shall be published with the notice of the election. The proceeds of any sale or lease made according to this section shall be applied toward the payment of the existing indebtedness of the

municipality incurred for the purpose of purchasing, erecting, operating, or enlarging, improving, or extending such plant, system, or line. The purchaser or lessee, however, shall not be required to see that the consideration of the purchase or lease is applied correctly as provided in this section, but he shall be protected fully in making the payment or payments by the receipt of the city auditor. Nothing contained in this section shall prevent the governing body from selling or disposing of any machinery, material, or other property belonging to any such utility which may have been inadequate or insufficient for the purposes for which it was intended to be used. This section does not apply to a lease by a municipality of any plant, system, or line to the state, or any agency or institution of the state pursuant to subsection 5 of section 40-33-01.

SECTION 8. AMENDMENT. Section 40-33-04 of the North Dakota Century Code is amended and reenacted as follows:

40-33-04. Manner of payment of purchase, erection, improvement, or leasing of plant, system, or line. Any municipality may pay the cost of purchasing, erecting, enlarging, improving, extending, or leasing any municipal plant, system, line, or any part thereof:

1. Out of the earnings of the plant, system, or line;
2. By issuing special assessment warrants as provided in section 40-33-05;
3. By issuing bonds of the municipality as provided in section 40-33-07;
4. Partly by such special assessment warrants and partly by such bonds;
or
5. Partly out of the earnings of the plant, system, or line, and partly by such special assessments or bonds or special assessments and bonds.

A municipality may pay the cost of leasing any municipal plant, system, line, or any part thereof from the state, or any agency or institution of the state under subsection 5 of section 40-33-01 solely from revenues to be derived by the municipality from the ownership, sale, lease, disposition, and operation of the waterworks, mains, and water distribution system; the funds or any other amounts invested by the municipality pursuant to section 21-06-07, or invested on the municipality's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the governing body of the municipality or received from federal or state sources.

When such cost, or any part thereof, is to be paid out of the earnings, the cost or the part thereof payable out of the earnings shall not become a general obligation of the municipality payable out of the money raised through taxation but shall be a special obligation payable solely and exclusively out of the earnings derived from the operation of the plant, system, or line.

SECTION 9. A new section to chapter 40-34 of the North Dakota Century Code is created and enacted as follows:

Agreements between municipalities and with the state or private parties
- Leasing property. Notwithstanding any other law, any municipality of the state,

either individually or jointly by agreement, may enter agreements to lease to the state, or any agency or institution of the state, or to any person for such compensation and upon such terms and conditions as the parties under such agreement may stipulate, all or part of, or an undivided or other interest in, its sewage system and all related real and personal property for the collection, treatment, purification, and disposal in a sanitary manner of sewage. In addition, any municipality of the state, either individually or jointly by agreement, may enter agreements to lease from the state, or any agency or institution of the state, or from any person all or part of, or an undivided or other interest in, its sewage system and all related real and personal property for the collection, treatment, purification, and disposal in a sanitary manner of sewage for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Such agreements must be authorized by resolution of the governing body of a municipality upon a majority vote of the members of the governing body. For the purposes of this section, such agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement. A lease obligation under this section may not exceed a term of ninety-nine years. A lease obligation under this section does not constitute an indebtedness of the municipality or a pledge of the full faith and credit or unlimited taxing resources of the municipality. Notwithstanding any other law, a municipality may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under this section. The municipality may, by resolution of the governing body upon a majority vote of the members of the governing body, accept a proposal that it determines to be in the public interest.

SECTION 10. AMENDMENT. Section 40-34-02 of the North Dakota Century Code is amended and reenacted as follows:

40-34-02. Methods of defraying cost of sewage or garbage disposal improvements or lease. The total cost of a sewage or garbage disposal system, or any portion thereof, may be defrayed by the following alternative methods:

1. Out of the general current tax revenues on hand and appropriated for that purpose.
2. Out of the proceeds of the sale of general liability bonds issued in accordance with the procedure and subject to the conditions and limitations prescribed by chapter 21-03, as far as the same are applicable.
3. Partly out of general current tax revenues on hand and appropriated for that purpose and the residue out of the proceeds of the sale of general liability bonds as provided in subsection 2, as the governing body of the municipality shall determine by a majority vote.
4. Partly from moneys secured by the issuance of mortgage bonds secured by the net revenues of the improvement or system and by a mortgage or deed of trust upon the improvement or system issued by the municipality. Bonds issued under this subsection shall not exceed sixty percent of the cost of the improvement, and the remaining forty

percent of such cost shall be defrayed as provided in subsection 1, 2, or 3.

5. From moneys secured by the issuance and sale of first mortgage bonds secured by the assets and property of the improvement or system in like manner as provided in subsection 4, except that such bonds may be issued for the total cost of the improvement upon compliance with this subsection. Bonds issued under this subsection shall be secured by a pledge of the net revenues of the improvement or system to be set apart as an interest and sinking fund to pay the principal and interest of such first mortgage bonds as they mature. If the method provided in this subsection is utilized by any municipality to defray the cost of a sewage disposal system, it, by a resolution of its governing body, shall create the district, provide for and approve the plans and specifications and estimates of the cost, and adopt and publish the resolution declaring the work necessary to be done in accordance with the requirements of chapter 40-22 as far as the same may be applicable. If the owners of property liable to be imposed with the sewage disposal service charges as provided in this subsection shall file with the city auditor, within thirty days after the first publication of the resolution, a written protest against the improvement, the governing body at its next meeting after the expiration of the time for filing protests against the improvement, shall hear and determine the sufficiency of the protests. After the hearing has been had, the governing body, if it finds the protests to contain the signatures of the owners of a majority of the property liable to be charged, shall not proceed further with the improvement. If the protests are found insufficient or invalid, the governing body of the municipality may cause the improvement to be made, contract therefor, and defray the cost thereof in the manner provided in this subsection.

A municipality may pay the cost of leasing any sewage systems and all related real and personal property for the collection, treatment, purification, and disposal in a sanitary manner of sewage from the state, or any agency or institution of the state under section 40-34-01.2, solely from revenues to be derived by the municipality from the ownership, sale, lease, disposition, and operation of the sewage systems; the funds or any other amounts invested by the municipality pursuant to section 21-06-07, or invested on the municipality's behalf by the state, or any agency of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the governing body of the municipality or received from federal or state sources.

SECTION 11. A new section to chapter 54-01 of the North Dakota Century Code is created and enacted as follows:

Lease of state-owned property. Notwithstanding any other provision of law, the state, or any agency or institution of the state, may enter agreements to lease all or part of, or an undivided or other interest in, any real or personal property belonging to the state, or any agency or institution of the state, to and, or, from any agency or institution of the state or any person for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. Such agreements must be authorized by the board, if any, or commissioner or other executive officer of the commission, agency, or institution holding, controlling, possessing, or owning the property or on whose behalf the property is held, and must be approved by the industrial commission. For purposes of this section, the agreements include any lease, sublease, purchase agreement, lease-purchase

agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement entered as part of a long-term lease and leaseback transaction. A lease obligation under this section may not exceed a term of ninety-nine years. A lease obligation entered into under this section is payable solely from revenues to be derived by the state, or any agency or institution of the state, from the ownership, sale, lease, disposition, and operation of the property; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by the state, or any agency or institution of the state, from any support and operating agreement, service agreement, or any other agreement relating to the property; funds, if any, appropriated annually by the legislative assembly or received from federal sources; and income or proceeds from any collateral pledged or provided therefor. A lease obligation under this section does not constitute an indebtedness of the state, or any agency or institution of the state, or a pledge of the full faith and credit or unlimited taxing resources of the state, or any agency or institution of the state. Notwithstanding any other law, the state, or any agency or institution of the state, may solicit and accept one or more proposals for a lease transaction, including the arrangement thereof, under this section, and accept any proposal that is determined to be in the public interest. The bond bank, on behalf of the state, or any agency or institution of the state, may do and perform any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

SECTION 12. A new section to chapter 54-17 of the North Dakota Century Code is created and enacted as follows:

Lease of municipal waterworks and sewage systems. Notwithstanding any other provision of law, the state, acting by and through its industrial commission, may enter agreements to lease all or part of, or an undivided or other interest in, the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto pursuant to subsection 5 of section 40-33-01, subsection 12 of section 61-24.5-09, or subsection 23 of section 61-35-12 or any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-01.2 or subsection 23 of section 61-35-12 to or from a municipality or other political subdivision or agency of the state, or to or from any person, for such compensation and upon such terms and conditions as the parties under such agreement may stipulate. For the purposes of this section, such agreements include any lease, sublease, purchase agreement, lease-purchase agreement, installment purchase agreement, leaseback agreement, or other contract, agreement, instrument, or arrangement pursuant to which any rights, interests, or other property are transferred to, by, or from any party to, by, or from one or more parties, and any related documents entered or to be entered, including any operating agreement, service agreement, indemnity agreement, participation agreement, loan agreement, or payment undertaking agreement. Any lease obligation entered under this section is payable solely from revenues to be derived by the state or any agency or institution of the state from the ownership, sale, lease, disposition, and operation of the plant or equipment of any waterworks, mains, or water distribution system and any property related thereto or sewage systems and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage; any funds or investments permitted under state law, and any earnings thereon, to the extent pledged therefor; revenues to be derived by the state from any support and operating agreement, service agreement, or any other

agreement relating to the waterworks, mains, and water distribution system or sewage system; funds, if any, appropriated annually by the legislative assembly; and income or proceeds from any collateral pledged or provided therefor. A lease obligation entered under this section does not constitute an indebtedness of the industrial commission, the state, or any agency or officer or agent thereof, or a pledge of the full faith and credit or unlimited taxing resources of the industrial commission, the state, or any agency or officer or agent thereof. The industrial commission may authorize the bond bank or another agency or institution of the state to do and perform any acts and things authorized by this section, including making, entering, and enforcing all contracts or agreements necessary, convenient, or desirable for the purposes of this section.

SECTION 13. Three new subsections to section 57-02-08 of the North Dakota Century Code are created and enacted as follows:

Notwithstanding any other law, all property, including any possessory interest therein, relating to any waterworks, mains, and water distribution system leased to the state, or any agency or institution of the state, or to a private entity pursuant to subsection 5 of section 40-33-01, subsection 12 of section 61-24.5-09, or subsection 23 of section 61-35-12, which property is operated by, or providing services to, a municipality or other political subdivision or agency of the state, or its citizens.

Notwithstanding any other law, all property, including any possessory interest therein, relating to any sewage systems and facilities for the collection, treatment, purification, and disposal in a sanitary manner of sewage leased to the state, or any agency or institution of the state, or to a private entity pursuant to section 40-34-01.2 or subsection 23 of section 61-35-12, which property is operated by, or providing services to, a municipality or other political subdivision or agency of the state, or its citizens.

Notwithstanding any other law, all property, including any possessory interest therein, leased to a private entity pursuant to section 54-01-05.6, which property is operated by, or providing services to, the state or its citizens.

SECTION 14. A new subsection to section 61-24.5-09 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other law, to exercise the powers granted to a municipality under subsection 5 of section 40-33-01 pursuant to the limitations set forth therein. The authority may pay the cost of leasing any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto pursuant to subsection 5 of section 40-33-01 solely from revenues to be derived by the authority from the ownership, sale, lease, disposition, and operation of the waterworks, mains, and water distribution system; the funds or any other amounts invested by the authority pursuant to the laws of the state or invested on the authority's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent

pledged therefor; and funds, if any, appropriated annually by the board of the authority or received from federal or state sources.

SECTION 15. A new subsection to section 61-35-12 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other law, exercise the powers granted to a municipality under subsection 5 of section 40-33-01 and section 40-34-01.2, pursuant to the limitations set forth therein. A district may pay the cost of leasing any waterworks, mains, and water distribution system and any equipment or appliances connected therewith and any property related thereto pursuant to subsection 5 of section 40-33-01, or of any sewage system and all related property for the collection, treatment, purification, and disposal in a sanitary manner of sewage pursuant to section 40-34-01.2, solely from revenues to be derived by the district from the ownership, sale, lease disposition, and operation of the waterworks, mains, and water distribution system or sewage system; the funds or any other amounts invested by such district pursuant to section 21-06-07, or invested on such district's behalf by the state, or any agency or institution of the state, in conformity with policies of the industrial commission, including investment in a guaranteed investment contract and any earnings thereon, to the extent pledged therefor; and funds, if any, appropriated annually by the board of the district or received from federal or state sources.

SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 14, 2003
Filed April 14, 2003

CHAPTER 343**SENATE BILL NO. 2175**

(Senators Polovitz, Christenson, Tollefson)
(Representatives Herbel, Potter)

MAYOR COMPENSATION

AN ACT to amend and reenact section 40-08-15 of the North Dakota Century Code, relating to the compensation of a mayor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-08-15 of the North Dakota Century Code is amended and reenacted as follows:

40-08-15. Compensation of mayor. The mayor shall receive such compensation as the city council may direct by ordinance, ~~but his compensation shall not be changed during his term of office.~~

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 344**SENATE BILL NO. 2270**

(Senators Christenson, Nelson)
(Representative Keiser)

CITY FINANCIAL STATEMENTS

AN ACT to amend and reenact sections 40-16-04 and 40-16-05 of the North Dakota Century Code, relating to preparation and publication of the city financial statement.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-16-04 of the North Dakota Century Code is amended and reenacted as follows:

40-16-04. Reports of city auditor. The city auditor of each city shall prepare and submit to the governing body of the city reports as follows:

1. Monthly financial statement. A monthly financial statement shall be prepared showing the revenues, expenditures, transfers, and fund balances.
2. Annual financial statement. An annual financial statement shall be prepared, on or before ~~February~~ March first, showing the revenues, expenditures, transfers, and fund balances of the city for the year ended December thirty-first. This financial statement shall be retained in the office of the city auditor as a permanent public record.

SECTION 2. AMENDMENT. Section 40-16-05 of the North Dakota Century Code is amended and reenacted as follows:

40-16-05. Auditor to publish statement. Within ~~thirty~~ sixty days after the close of each fiscal year, the auditor of each city shall make and cause to be published in the official city newspaper a financial statement of the city showing the receipts and disbursements on account of each fund during the last preceding year.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 345

SENATE BILL NO. 2053

(Legislative Council)
(Taxation Committee)

SPECIAL ASSESSMENT COST ESTIMATES

AN ACT to amend and reenact sections 40-22-10 and 40-22-29 of the North Dakota Century Code, relating to cost estimates for improvements by special assessments; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-22-10 of the North Dakota Century Code is amended and reenacted as follows:

40-22-10. Engineer's report required - Contents. After a special improvement district has been created, the governing body of a municipality, if it deems it necessary to make any of the improvements set out in section 40-22-01 in the manner provided in this chapter, shall direct the engineer for the municipality, or some other competent engineer if the municipality does not have a competent municipal engineer, to prepare a report as to the general nature, purpose, and feasibility of the proposed improvement and an estimate of the probable cost of the ~~work~~ improvement, including:

1. A separate statement of the estimated cost of the work for which proposals must be advertised under section 40-22-19; and
2. A separate statement of all other items of estimated cost not included under subsection 1 which are anticipated to be included in the cost of the improvement under sections 40-23-05 and 40-23.1-04.

SECTION 2. AMENDMENT. Section 40-22-29 of the North Dakota Century Code is amended and reenacted as follows:

40-22-29. Engineer's statement of estimated cost required - Governing body to enter into contracts. Before adopting or rejecting any bid filed under the provisions of this chapter, the governing body shall require the engineer for the municipality to make a careful and detailed statement of the estimated cost of the work for which proposals were advertised under section 40-22-19. The governing body may not award the contract to any bidder if the engineer's estimate prepared pursuant to this section exceeds the engineer's estimate of the cost of the work prepared pursuant to subsection 1 of section 40-22-10 by forty percent or more.

SECTION 3. EFFECTIVE DATE. This Act is effective for improvement districts for which a resolution or ordinance creating the district is adopted after July 31, 2003.

Approved March 21, 2003
Filed March 24, 2003

CHAPTER 346**SENATE BILL NO. 2052**

(Legislative Council)
(Taxation Committee)

FLOOD CONTROL ASSESSMENTS

AN ACT to amend and reenact section 40-23-22.1 of the North Dakota Century Code, relating to city flood control special assessments on privately owned structures, fixtures, and improvements, used for private commercial purposes, which are located on state-owned land; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-23-22.1 of the North Dakota Century Code is amended and reenacted as follows:

40-23-22.1. City flood control special assessment exemption for state property - Limitations.

1. Notwithstanding any other provision of law, property of the state in a city subject to this section is exempt from special assessments levied for flood control purposes. Upon request by the governing body of the city, the exemption under this section may be completely or partially waived by majority vote of the budget section of the legislative council. A city is subject to the exemption under this section in recognition of state financial assistance for flood control provided to the city pursuant to section 61-02.1-01 or other appropriation or commitment of state funds.
2. The exemption under this section does not apply to any privately owned structure, fixture, or improvement located on state-owned land if the structure, fixture, or improvement is used for commercial purposes unless the structure, fixture, or improvement is primarily used for athletic or educational purposes at a state institution of higher education. An assessment allowed under this subsection must be based on the square footage or front footage of the land occupied by the structure, fixture, or improvement and made against the structure, fixture, or improvement and not against the land on which it is located.

SECTION 2. EFFECTIVE DATE. This Act is effective for special assessment installments confirmed after July 31, 2003.

Approved April 4, 2003
Filed April 4, 2003

CHAPTER 347

SENATE BILL NO. 2368

(Senators Cook, Fischer, J. Lee)
(Representatives Clark, R. Kelsch, Porter)

SPECIAL ASSESSMENT AUDITS

AN ACT to create and enact two new sections to chapter 40-23 of the North Dakota Century Code, relating to audits of special assessments when costs exceed estimates and future assessments on annexed property; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 40-23 of the North Dakota Century Code is created and enacted as follows:

Audit of certain special assessment improvements. If the costs of an improvement determined and assessed under section 40-23-07 or 40-23.1-04 exceeds the costs of the work as contained in the engineer's estimate under section 40-22-10 by seventy percent or more, the governing body of the city shall secure an audit of all costs included in the assessment for the project, prepared in accordance with generally accepted auditing standards. The audit report must include a separate statement of the engineer's estimate of the cost of the work, the actual cost of the work, the cost of extra work, engineering fees, fiscal agents' fees, attorneys' fees, publication costs, warrant printing costs, interest costs, and each separate item of expense incurred in making the improvement and levying the assessment for the improvement. The city shall make a copy of the audit report available without charge to any person who requests a copy. The audit report is not required if the costs of an improvement exceed the costs of the work as contained in the engineer's estimate by seventy percent or more because of a petition to enlarge the district under section 40-22-09 or a request for additional work within the district by the owners of a majority of the area of the property in the district. Audit and copying expenses under this section must be paid by the city and may not be paid from special assessment funds.

SECTION 2. A new section to chapter 40-23 of the North Dakota Century Code is created and enacted as follows:

Future assessments on annexed property. The special assessment commission shall prepare and file with the city auditor a list of estimated future assessments on property located outside the corporate limits of the city at the time of contracting for an improvement but which the special assessment commission determines is potentially benefited by the improvement and likely to be annexed to the city.

SECTION 3. EFFECTIVE DATE. This Act is effective for special assessment improvement projects for which a resolution of necessity is adopted after July 31, 2003.

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 348

HOUSE BILL NO. 1288

(Representatives Kasper, Bellew, F. Klein)
(Senators Espegard, Fischer, Robinson)

PARK BOARD COMMISSIONER COMPENSATION

AN ACT to amend and reenact section 40-49-10 of the North Dakota Century Code, relating to the compensation of members of a board of park commissioners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 40-49-10 of the North Dakota Century Code is amended and reenacted as follows:

40-49-10. Members of board of park commissioners may receive compensation - Interest in contracts restricted. The members of the board of park commissioners ~~shall~~ are entitled to receive such compensation for their services as ~~may be prescribed in the amount approved by the governing body of the municipality board in the park district annual budget.~~ No A park board member may not be directly or indirectly interested in any contract requiring the expenditure of park district funds unless the contract has been approved by two-thirds of the park board. Before the contract is approved, a motion must be made and approved that the service or property is not readily available elsewhere at equal cost. Regardless of this section, any park board, by resolution duly adopted, may contract with park board members for minor supplies or incidental expenses.

Approved March 19, 2003
Filed March 19, 2003

CHAPTER 349

SENATE BILL NO. 2388

(Senators Syverson, Grindberg, Tollefson)
(Representatives Bernstein, Clark, Koppelman)

MUNICIPAL INDUSTRIAL DEVELOPMENT BONDS

AN ACT to amend and reenact sections 40-57-02, 40-57-03, 40-57-04, 40-57-04.1, and 40-57-05 of the North Dakota Century Code, relating to municipal industrial development bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁶⁹ **SECTION 1. AMENDMENT.** Section 40-57-02 of the North Dakota Century Code is amended and reenacted as follows:

40-57-02. "Project" and "municipality" defined Definitions. As used in this chapter, unless a different meaning clearly appears from the context, the ~~term "municipality" includes~~ following terms have the meanings given below:

1. "Municipality" means counties as well as municipalities of the types listed in subsection 4 of section 40-01-01 and, in the case of parking projects, municipal parking authorities created pursuant to section 40-61-02; ~~and the term "project".~~
2. "Project" means any real property, buildings, and improvements on real property or the buildings thereon, and any equipment located on such real property or in such buildings, or elsewhere, or personal property which is used or useful in connection with a revenue-producing enterprise, or any combination of two or more such enterprises, engaged or to be engaged in:
 4. a. Assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products, or any combination thereof.
 2. b. Storing, warehousing, distributing, or selling any products of agriculture, mining, or manufacture.
 3. c. Providing hospital, nursing home, or other health care facilities and service.
 4. d. Improvements or equipment used or to be used for the abatement or control of environmental pollution in connection with any new or existing revenue-producing enterprise.
 5. e. Public vocational education.

¹⁶⁹ Section 40-57-02 was also amended by section 82 of House Bill No. 1183, chapter 138.

6. f. Any other industry or business not prohibited by the constitution or laws of the state of North Dakota.

In no event, however, does the term "project" include those undertakings defined in chapter 40-35, with the exception of projects referred to in ~~subsections 3, 4, and 5~~ this subsection.

3. "Revenue agreement" means a written agreement between a municipality and a contracting party with respect to a project, whereby the contracting party agrees to pay to the municipality or its order amounts sufficient at all times to pay when due the principal of, premium, if any, and interest on all bonds issued by the municipality with respect to that project. A revenue agreement may be in the form of a lease, mortgage, direct or installment sale contract, loan agreement, take-or-pay or similar agreement, and be secured in a manner the parties agree to or be unsecured.

¹⁷⁰ **SECTION 2. AMENDMENT.** Section 40-57-03 of the North Dakota Century Code is amended and reenacted as follows:

40-57-03. Powers of municipality. Any municipality, in addition to the powers prescribed elsewhere by the laws of this state, shall have the power to:

1. Acquire whether by purchase, lease, or gift, from any source whatsoever, any real property, buildings, improvements on real property or buildings, including but not limited to easements, profits, rights in land and water rights deemed necessary in connection therewith, and to construct, reconstruct, improve, better, or extend to real property, buildings, and improvements on real property and buildings of any project which shall be located within this state; provided, that the property acquired for the project shall be located wholly within the boundaries of the municipality acquiring it unless a contract or agreement between that municipality and any other municipality in which part or all of the property is located is entered into as authorized by subsection 8.
2. Issue revenue bonds, in anticipation of the collection of revenues of the project, to finance, in whole or in part, the cost of the project, whether then in existence or not.
3. Lease projects to any industrial or commercial enterprise or nonprofit corporation or to any school district for vocational education purposes, in such manner that rents to be charged for the use of such projects shall be fixed, and revised from time to time as necessary, so as to produce income and revenue sufficient to provide for the prompt payment of interest upon all bonds issued hereunder, to create a sinking fund to pay the principal of such bonds when due, and to provide for the operation, maintenance, insurance on, and depreciation of such projects, and any taxes thereon.

¹⁷⁰ Section 40-57-03 was also amended by section 83 of House Bill No. 1183, chapter 138.

4. With respect to any ~~hospitals, nursing homes, or other health care facilities comprising a project to be used by any nonprofit corporation,~~ enter into ~~loan revenue~~ agreements with ~~such nonprofit corporation~~ providing for the municipality to loan the proceeds derived from the issuance of bonds pursuant to this chapter to the ~~nonprofit corporation~~ contracting party to be used to pay costs of the project and providing for the repayment of the loan by the ~~nonprofit corporation~~ contracting party, and which may provide for such loans or bonds to be secured by a mortgage on and security in the project or such other security as may be determined by the municipality, whether delivered or granted to the municipality, the holder or holders of said bonds, a trustee therefor or otherwise.
5. Pledge to the punctual payment of said bonds and the interest thereof, all or any part of the revenues of such project, including the revenues of projects which shall be acquired or constructed subsequent to the issuance of such bonds, as well as revenues of projects existing when such bonds were issued.
6. Mortgage or otherwise encumber said projects in favor of the holder, or holders, of said revenue bonds, or a trustee therefor; provided, that in creating any such mortgages or encumbrances, a municipality shall not have the power to obligate itself except with respect to the project, except as otherwise provided by section 40-57-19.
7. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers herein granted, or in the performance of its covenants or duties, or in order to secure the payments of its bonds.
8. Enter into and perform such contracts and agreements with other municipalities, political subdivisions, and state agencies, authorities, and institutions as the respective governing bodies of the same may deem proper and feasible for or concerning the planning, construction, lease, or other acquisition, and the financing of such facilities, and the maintenance thereof. Any such municipalities so contracting with each other may also provide in their contract or agreement for a board, commission, or such other body as their governing bodies may deem proper for the supervision and general management of the facilities of the project.
9. Accept from any authorized agency of the federal government loans or grants for the planning, construction, acquisition, leasing, or other provision of any project, and to enter into agreements with such agency respecting such loans or grants.
10. Sell and convey all properties acquired in connection with such projects, including without limitation the sale and conveyance thereof subject to such mortgage as herein provided, and the sale and conveyance thereof to the lessee under an option granted in the lease of the project, for such price and at such time as the governing body of the municipality may determine; provided, however, that no sale or conveyance of such properties shall ever be made in such manner as to impair the rights or interests of the holder, or holders, of any bonds issued under the authority of this chapter.

11. Issue said revenue bonds to refund, in whole or in part bonds previously issued by such municipality under authority of this chapter.
12. In any instance where the project ~~acquired~~ financed by the municipality consists of the construction, reconstruction, improvement, betterment of real property, buildings and improvements on real property and buildings, the provisions of chapter 48-02 and other applicable statutes shall apply; except that the municipality, in the ~~lease~~ revenue agreement and resolution or mortgage defining the terms and conditions upon which the project is to be constructed, ~~leased~~, and financed, or in a preliminary agreement establishing the general terms of the ~~lease revenue agreement~~ and financing of the project when constructed, may permit a ~~lessee~~ 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 ~~lessee~~ contracting party, whether or not the procedure followed by the ~~lessee~~ contracting party is in conformity with said chapter 48-02.

No municipality may operate any project referred to in this chapter as a business or in any manner whatsoever, except as the lessor, contract vendor, secured party, or lender thereof. No debt on the general credit of the municipality may be incurred in any manner for any purpose under this chapter, except as otherwise provided by section 40-57-19. No municipality may pay out of its general fund for, or otherwise contribute to the cost of, construction of a project, except as otherwise provided by section 40-57-19.

SECTION 3. AMENDMENT. Section 40-57-04 of the North Dakota Century Code is amended and reenacted as follows:

40-57-04. Resolution authorizing project and the issuance of revenue bonds - Public notice and hearing - No election required. The acquisition, construction, reconstruction, improvement, betterment, extension, or financing of any project, and the issue of bonds in anticipation of the collection of the revenues of such project to provide funds to pay for the cost thereof, may be authorized by an ordinance or resolution of the governing body adopted at a regular meeting thereof by the affirmative vote of a majority of its members. Prior to the issuance of revenue ~~or refunding~~ bonds under authority of this chapter, the governing body shall give notice and hold a public hearing on the proposed bond issue. Notice of the hearing shall be published in the official newspaper of the municipality once a week for two successive weeks prior to the time set for the hearing. The notice shall specify the time and place of the hearing, and the amount and purpose of the proposed bond issue. The governing body shall not approve the bond issue unless it appears, after the public hearing, that such approval is in the public interest of the municipality. Except as provided in section 40-57-19, no election shall be required to authorize the use of any of the powers conferred by this chapter. No public hearing is required prior to the issuance of refunding bonds issued pursuant to section 40-57-19.1.

SECTION 4. AMENDMENT. Section 40-57-04.1 of the North Dakota Century Code is amended and reenacted as follows:

40-57-04.1. Notice to competitors - Authority to issue bonds limited if project would compete with existing enterprises. Prior to approval of the issuance of any bonds under authority of this chapter, except refunding bonds issued

pursuant to section 40-57-19.1, the governing body of the municipality shall, when a competitive project is involved, include notice of the competitive nature of the proposed project in the public notice required to be published prior to the public hearing required under section 40-57-04. The governing body shall not approve the bond issue unless it appears that the impact and effect of the issue upon existing industry and business will not result in an unfair advantage for the proposed project to the substantial detriment of existing enterprises.

SECTION 5. AMENDMENT. Section 40-57-05 of the North Dakota Century Code is amended and reenacted as follows:

40-57-05. Notice to securities commissioner - Approval of public officer not required. Upon the issuance of bonds under this chapter, the ~~project lessee~~ contracting party shall furnish the state securities commissioner the following information concerning the project:

1. The name of the ~~project lessee~~ contracting party.
2. The location and nature of the project.
3. The amount and nature of the bonds issued.
4. The general terms and nature of the financing arrangement.
5. A copy of the official statement of the offering, if one was prepared.

The consent of any governmental body or public officer of the state shall not be required to authorize the issuance or sale of bonds or the making of any mortgage in connection therewith.

Approved March 21, 2003
Filed March 21, 2003

CHAPTER 350

HOUSE BILL NO. 1457 (Representatives Carlson, Svedjan) (Senator Espegard)

RENAISSANCE ZONE CRITERIA

AN ACT to amend and reenact subdivision c of subsection 1 and subsections 7 and 9 of section 40-63-03 of the North Dakota Century Code, relating to criteria for renaissance zones.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision c of subsection 1 of section 40-63-03 of the North Dakota Century Code is amended and reenacted as follows:

- c. The proposed renaissance zone is not more than twenty square blocks, except in a city with a population of greater than five thousand the renaissance zone may exceed twenty square blocks at the rate of one additional block for each additional five thousand population to a maximum size of thirty-five blocks. Population is based upon the most recent federal decennial census.

SECTION 2. AMENDMENT. Subsections 7 and 9 of section 40-63-03 of the North Dakota Century Code are amended and reenacted as follows:

7. A city may apply to the department of commerce division of community services at any time during the duration of a zone to expand a previously approved renaissance zone that is less than ~~twenty square blocks~~ to not more than twenty square blocks the maximum size allowed under subdivision c of subsection 1. If the expansion is approved by the department of commerce division of community services, the blocks in the expansion are eligible for up to fifteen years of renaissance zone status.
9. If ~~after a minimum of five years~~ a portion of an approved renaissance zone is not progressing, the city may request the department of commerce division of community services to permit deleting that portion and to make ~~a one-time adjustment~~ an adjustment of the boundaries to add another equal, contiguous area to the original zone.

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 351

SENATE BILL NO. 2259

(Senators Grindberg, Espegard, Heitkamp)
(Representatives S. Kelsh, Severson, Weiler)

RENAISSANCE FUND ORGANIZATIONS

AN ACT to amend and reenact section 40-63-07 of the North Dakota Century Code, relating to renaissance fund organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷¹ **SECTION 1. AMENDMENT.** Section 40-63-07 of the North Dakota Century Code is amended and reenacted as follows:

40-63-07. Renaissance fund organization - Exemption from taxation.

1. Each city with a designated renaissance zone may establish a renaissance fund ~~corporation~~ organization, if the detailed plan for such an organization is clearly established in the development plan and approved with the plan, or is submitted at a later date to the department of commerce division of community services for approval after the designation of a renaissance zone.
2. The purpose of a renaissance fund organization is solely to raise funds to be used to make investments in zone projects and to make investments in ~~businesses within a city's~~ designated renaissance zone cities. A renaissance fund organization may provide financing to projects undertaken by individuals, partnerships, limited partnerships, limited liability companies, trusts, corporations, nonprofit organizations, and public entities. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing. The amount of financing is not limited by this chapter.
3. ~~A renaissance fund organization that is established by a city may provide financing to businesses within the city's zone and may provide financing to zone-approved projects throughout the state.~~
4. A renaissance fund organization is exempt from any tax imposed by chapter 57-35.3 or 57-38. An exemption under this section may be passed through to any shareholder, partner, and owner if the renaissance fund organization is a passthrough entity for tax purposes. A corporation or financial institution entitled to the exemption provided by this subsection ~~must~~ shall file required returns and report income to the tax commissioner as required by the provisions of those chapters as if the exemption did not exist. If an employer, this subsection does not

¹⁷¹ Section 40-63-07 was also amended by section 30 of Senate Bill No. 2046, chapter 48.

exempt a renaissance fund organization from complying with the income tax withholding laws.

- 5- 4. A credit against state tax liability as determined under section 57-35.3-03, 57-38-29, 57-38-30, or 57-38-30.3 is allowed for investments in a renaissance fund organization. The amount of the credit is fifty percent of the amount invested in the renaissance fund organization during the taxable year. Any amount of credit which exceeds a taxpayer's tax liability for the taxable year may be carried forward for up to five taxable years after the taxable year in which the investment was made.
- 6- 5. The total amount of credits allowed under this section may not exceed, in the aggregate, an initial limit of two million five hundred thousand dollars. Upon exhaustion of this initial limit, an additional ~~one~~ two million five hundred thousand dollars in credits is available for investments in renaissance fund organizations for ~~taxable years beginning after December 31, 2000,~~ for investments permitted under this chapter if more than sixty-five percent of the organization's net investments received have been invested as permitted under this chapter or the organization is established after the exhaustion of the initial limit. Upon exhaustion of the initial limit, an additional ~~one million five hundred thousand~~ one million five hundred thousand dollars in credits is available for investments in renaissance fund organizations for taxable years beginning after December 31, 2002, for investments permitted under this chapter if more than sixty-five percent of the qualifying organization's net investments received have been invested as permitted under this chapter or the organization is established after the exhaustion of the initial limit. A renaissance fund organization that has received investments that qualify for these additional credits under this subsection may not use more than fifty percent of such investments for organization investments outside of a renaissance zone.
- 7- 6. Income to a renaissance fund organization derived from the sale or refinancing of zone properties financed wholly or in part by the organization may be dispersed as annual dividends equal to the income, minus ten percent, derived from all sources and proportional to the investment. In the event of a loss to the fund resulting in a temporary diminishment of the fund below the original principal amount, no annual dividend may be paid until the fund is restored.
- 8- 7. Income to a renaissance fund organization derived from interest or the temporary investment of its funds in certificates of deposit, bonds, treasury bills, or securities may be used for administration.
- 9- 8. If an investment in a renaissance fund organization which is the basis for a credit under this section is redeemed by the investor within ten years of the date it is purchased, the credit provided by this section for the investment must be disallowed, and any credit previously claimed and allowed with respect to the investment must be paid to the tax commissioner with the appropriate return of the taxpayer covering the period in which the redemption occurred. When payments are made to the tax commissioner under this section, the amount collected must be handled in the same manner as if no credit had been allowed.

40. 9. A renaissance fund organization shall secure an annual audit of its financial records, prepared by an independent certified public accounting firm in accordance with generally accepted auditing standards. The audit report must include a statement of the percentage of annual ~~net~~ investments received by the organization ~~after December 31, 2000~~, which have been invested by the organization in investments permitted under this chapter, including the use of investments, distinguishing between organization investments made in renaissance zones and outside renaissance zones. ~~If the audit report shows that less than fifty percent of such net investments have been so invested during the previous four years and the organization has been incorporated for four years or more, that organization may not accept any new investments until the governing body of the city in which the organization was established determines that good cause exists for the failure to reach that level of investment or until a subsequent audit report shows that fifty percent or more of such net investments have been so invested.~~ A renaissance fund organization shall file a copy of each audit of its financial records under this subsection with the governing body of the city in which it was established, the department of commerce division of community services, and the tax commissioner. The department of commerce division of community services shall provide an annual report to the budget section of the legislative council showing the conclusions of audit reports filed under this subsection.
11. ~~A renaissance fund organization may invest in any residential or commercial property involved in a zone project.~~

Approved April 11, 2003
Filed April 14, 2003

UNIFORM COMMERCIAL CODE

CHAPTER 352

HOUSE BILL NO. 1070

(Agriculture Committee)

(At the request of the Commission on Uniform State Laws)

UCC SECURED TRANSACTION REVISIONS

AN ACT to create and enact a new subsection to section 41-09-29 of the North Dakota Century Code, relating to perfection of security interests; and to amend and reenact subdivision e of subsection 1 of section 41-09-02, subdivision vv of subsection 1 of section 41-09-02, subdivision a of subsection 2 of section 41-09-24, and subsection 1 of section 41-09-31 of the North Dakota Century Code, relating to definitions, the jurisdiction of banks, and perfection of security interests in certain property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷² **SECTION 1. AMENDMENT.** Subdivision e of subsection 1 of section 41-09-02 of the North Dakota Century Code is amended and reenacted as follows:

- e. "Agricultural lien" means an interest; ~~other than a security interest;~~ in farm products:
 - (1) That secures payment or performance of an obligation for:
 - (a) Goods or services furnished in connection with a debtor's farming operation or in connection with processing, production, or entrustment of the farm products; or
 - (b) Rent on real property leased by a debtor in connection with the debtor's farming operation;
 - (2) That is created by statute in favor of a person that:
 - (a) Finished goods or services in connection with processing, production, or entrustment of the farm product or in the ordinary course of that person's business furnished goods or services to a debtor in connection with a debtor's farming operation; or
 - (b) Leased real property to a debtor in connection with the debtor's farming operation; and

¹⁷² Section 41-09-02 was also amended by section 2 of House Bill No. 1070, chapter 352, and section 31 of Senate Bill No. 2046, chapter 48.

- (3) Of which the effectiveness does not depend on the person's possession of the personal property.

¹⁷³ **SECTION 2. AMENDMENT.** Subdivision vv of subsection 1 of section 41-09-02 of the North Dakota Century Code is amended and reenacted as follows:

- vv. "Health care insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided or to be provided.

SECTION 3. AMENDMENT. Subdivision a of subsection 2 of section 41-09-24 of the North Dakota Century Code is amended and reenacted as follows:

- a. If an agreement between the bank and ~~the debtor~~ its customer governing the deposit account or certificate of deposit expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this chapter, or this title, that jurisdiction is the bank's jurisdiction.

SECTION 4. A new subsection to section 41-09-29 of the North Dakota Century Code is created and enacted as follows:

A sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

SECTION 5. AMENDMENT. Subsection 1 of section 41-09-31 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 4, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:
 - a. A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt subsection 1 of section 41-09-30;
 - b. Section 35-01-05.1; or
 - c. A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property; ~~or~~
 - d. ~~Section 35-01-05.~~

Approved March 26, 2003
Filed March 26, 2003

¹⁷³ Section 41-09-02 was also amended by section 1 of House Bill No. 1070, chapter 352, and section 31 of Senate Bill No. 2046, chapter 48.

CHAPTER 353**HOUSE BILL NO. 1379**

(Representative Klemin)

REAL ESTATE LAW PRIORITY

AN ACT to amend and reenact subsection 2 of section 41-09-09, subsection 2 of section 41-09-11, and subsection 7 of section 41-09-13 of the North Dakota Century Code, relating to priority of state real estate statutes over related provisions of the Uniform Commercial Code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 41-09-09 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~The~~ Except as provided in section 47-19-41, the application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

SECTION 2. AMENDMENT. Subsection 2 of section 41-09-11 of the North Dakota Century Code is amended and reenacted as follows:

2. A transaction, although subject to this chapter, is also subject to section 47-19-41 and chapters 13-03.1, 35-05, 49-09, and 51-13. In the case of conflict between this chapter and any of those statutes, the provisions of those statutes control. Failure to comply with any applicable statute has only the effect that is specified therein.

SECTION 3. AMENDMENT. Subsection 7 of section 41-09-13 of the North Dakota Century Code is amended and reenacted as follows:

7. ~~The~~ Except as provided in section 47-19-41, the attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 354

HOUSE BILL NO. 1185

(Representative Klemin)

UCC FINANCING AND TERMINATION STATEMENTS

AN ACT to amend and reenact subsection 6 of section 41-09-73 and section 41-09-84 of the North Dakota Century Code, relating to financing statements and termination statements under the Uniform Commercial Code.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁴ **SECTION 1. AMENDMENT.** Subsection 6 of section 41-09-73 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~Effective January 1, 2002, any~~ A social security number or federal tax identification number submitted under subdivision e of subsection 1 as a central indexing filing is not a public or exempt record as defined by subsection 5 of section 44-04-17.1 and, for documents submitted after January 1, 2002, may not be disclosed as part of any search under section 41-09-94 or 41-09-96 or as part of a copy of the record.

SECTION 2. AMENDMENT. Section 41-09-84 of the North Dakota Century Code is amended and reenacted as follows:

41-09-84. Termination statement - Remedies - Fees.

1. If a financing statement covering consumer goods is filed after December 31, 1973, then within one month or within ten days following written demand by the debtor after there is no outstanding secured obligation and no commitment to make advances, incur obligations, or otherwise give value, the secured party shall file with each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement, which must be identified by file number. In other cases when there is no outstanding secured obligation and no written commitment between the secured party and the debtor to make advances, incur obligations, or otherwise give value, the secured party, unless requested by the debtor in writing to continue the filing, must send to each filing officer with whom the financing statement was filed, a termination statement to the effect that the secured party no longer claims a security interest under the financing statement nor under the central notice system, which shall be identified by file number. ~~A termination statement submitted by a person other than the secured party of record must be accompanied by a separate written statement of assignment complying with section 41-09-85, including payment of the required fee, if any.~~ If the affected secured party fails to file a

¹⁷⁴ Section 41-09-73 was also amended by section 6 of House Bill No. 1092, chapter 382.

termination statement as required by this subsection within sixty days of when the secured obligation is fully satisfied, and the debtor has not requested in writing that the filing be continued, then under section 41-09-120 the secured party is liable to the debtor for one hundred dollars and for any loss caused to the debtor by such failure. The debtor's written request for a filing to be continued may be made at any time and be effective under this section. If the affected secured party fails to file a termination statement within ten days after proper written demand by the debtor, then under section 41-09-120 the secured party is liable to the debtor for one hundred dollars and for any loss caused to the debtor by such failure.

2. On presentation to the filing officer of a termination statement, the filing officer shall note the termination statement in the index. If the filing officer receives the termination statement in duplicate, the filing officer shall return one copy of the termination statement to the secured party stamped to show the time of receipt of the termination statement. If the filing officer has a microfilm or other photographic record or an optical disk of the financing statement, and of any related continuation statement, statement of assignment, and statement of release, the filing officer may remove the originals from the files at any time after receipt of the termination statement, or if the filing officer has no such record, the filing officer may remove the originals from the files at any time after one year after receipt of the termination statement.
3. The fee for filing and indexing a termination statement, including sending or delivering the financing statement, is five dollars. For any financing statement filed after April 8, 1991, the fee must be paid at the time the fee for filing the financing statement is paid.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 355

HOUSE BILL NO. 1360

(Representative Klemin)

FINANCING STATEMENT FILING DURATION

AN ACT to amend and reenact section 41-09-86 of the North Dakota Century Code, relating to the duration of filed financing statements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 41-09-86 of the North Dakota Century Code is amended and reenacted as follows:

41-09-86. (9-515) Duration and effectiveness of financing statement - Effect of lapsed financing statement.

1. Except as otherwise provided in subsections 5, 6, and 7, a ~~filed~~ financing statement filed in the personal property records or recorded in real property records is effective for a period of five years after the date of filing.
2. ~~(Reserved)~~ Except as otherwise provided in subsections 5, 6, and 7, a financing statement recorded as a fixture filing against real property is effective for a period of five years after the date of recording.
3. The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection 4. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.
4. A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection 1.
5. Except as otherwise provided in section 41-09-81, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection 3, unless, before the lapse, another continuation statement is filed pursuant to subsection 4. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.
6. If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

7. A record of a mortgage that is effective as a financing statement filed as a fixture filing under subsection 3 of section 41-09-73 remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

Approved April 4, 2003

Filed April 4, 2003

OCCUPATIONS AND PROFESSIONS

CHAPTER 356

HOUSE BILL NO. 1204 (Representatives Ekstrom, S. Kelsh) (Senator Nichols)

LANDSCAPE ARCHITECT REGULATION

AN ACT to create and enact two new sections to chapter 43-03 of the North Dakota Century Code, relating to regulation of landscape architects; to amend and reenact sections 43-03-01, 43-03-02, 43-03-08, 43-03-09, 43-03-10, 43-03-11, 43-03-12, 43-03-13, 43-03-16, 43-03-17, 43-03-18, 43-03-19, 43-03-20, 43-03-21, 43-03-22, and 43-03-23 of the North Dakota Century Code, relating to the registration of architects and landscape architects; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-03-01 of the North Dakota Century Code is amended and reenacted as follows:

43-03-01. Definitions. In this chapter, unless the context or the subject matter otherwise requires:

1. "Architect" means an individual who is registered as an architect under this chapter.
2. "Board" means the state board of architecture.
2. ~~"Architect" means an individual who is registered under the provisions of this chapter.~~
3. "Landscape architect" means an individual who practices landscape architecture.
4. "Landscape architecture" does not include the practice of engineering and practice of professional engineering as defined under section 43-19.1-02.

SECTION 2. AMENDMENT. Section 43-03-02 of the North Dakota Century Code is amended and reenacted as follows:

43-03-02. Persons exempt from regulations.

1. The architect registration provisions of this chapter do not apply to the following:
4. A a person making plans and specifications for a building to be constructed by or for that person-

2. ~~A;~~ a person supervising the erection, enlargement, or alteration of a building being constructed by or for that person-
 3. ~~A;~~ a person preparing for a school board plans and specifications for, or supervising the erection or alteration of, one-room or two-room school buildings costing not to exceed five thousand dollars-
 4. ~~The;~~ or an employee of an architect acting under that architect's instruction, control, and supervision in preparing plans and specifications for the erection, enlargement, or alteration of buildings.
2. The landscape architect registration provisions of this chapter do not apply to:
- a. An architect, a professional engineer, or a land surveyor in the course of providing professional services for which otherwise licensed or registered;
 - b. A nursery worker, gardener, landscape designer, or landscape contractor in the course of preparing planting plans or installing plant material, to the extent these activities do not impact the public health, safety, or welfare; or
 - c. An individual in the course of planning or otherwise caring for that individual's property.

SECTION 3. AMENDMENT. Section 43-03-08 of the North Dakota Century Code is amended and reenacted as follows:

43-03-08. Board to adopt rules and regulations. The board ~~shall~~ may adopt ~~the following~~ rules and regulations:

1. To govern ~~its~~ board proceedings.
2. For the examination of candidates for registration.
3. For the regulation of the practice of architecture and landscape architecture.

~~Such rules and regulations must be consistent with the provisions of this chapter and the laws of this state. The board, from time to time, may amend, modify, and repeal such rules and regulations.~~

4. For education of registration applicants.
5. For continuing education of registrants.

SECTION 4. AMENDMENT. Section 43-03-09 of the North Dakota Century Code is amended and reenacted as follows:

43-03-09. Practice of architecture without a license Unauthorized practice prohibited. A person may not practice architecture ~~as a profession~~ in this state unless ~~that person has obtained from the board a certificate of registration and is registered as an architect under this chapter or otherwise authorized by the board.~~ After December 31, 2004, a person may not practice landscape architecture in this

state unless registered as a landscape architect under this chapter or otherwise authorized by the board.

SECTION 5. AMENDMENT. Section 43-03-10 of the North Dakota Century Code is amended and reenacted as follows:

43-03-10. Regulation of use of ~~term licensed architects terms.~~

1. A person may not use the title or designation "registered architect", "licensed architect" ~~nor~~, any variation of the same those terms, ~~nor~~ or any other words, letters, or device to indicate that person is a licensed an architect, without being authorized to practice architecture in this state unless that person is registered as an architect in accordance with the provisions of under this chapter. In a copartnership of licensed architects, each member of the partnership shall hold a ~~license~~ certificate of registration to practice.
2. A person may not use the title or designation "registered landscape architect", "licensed landscape architect", any variation of those terms, or any other words, letters, or device to indicate that person is a landscape architect authorized to practice landscape architecture in this state unless that person is registered as a landscape architect under this chapter.

SECTION 6. AMENDMENT. Section 43-03-11 of the North Dakota Century Code is amended and reenacted as follows:

43-03-11. Application for examination - Fee. Before a ~~person~~ an individual may take the examination for registration as an architect or a landscape architect, that ~~person~~ individual shall make an application to the board submitting satisfactory evidence of having the required qualifications and shall pay a an examination fee of ~~fifty~~ not more than one hundred dollars. ~~When~~ If reexamination is required, the applicant shall pay a reexamination fee of ~~twenty-five~~ not more than one hundred dollars for a reexamination. The fee for reexamination may be waived in whole or in part by the board.

SECTION 7. AMENDMENT. Section 43-03-12 of the North Dakota Century Code is amended and reenacted as follows:

43-03-12. Board to issue certificates of registration. The board, ~~in accordance with the provisions of this chapter,~~ shall examine ~~those desiring to use the title of architect or to practice as architects in this state~~ applicants for registration and shall issue certificates of registration to those who are qualified. The board may administer an examination or may recognize a board-approved examination of a nationally recognized entity.

SECTION 8. AMENDMENT. Section 43-03-13 of the North Dakota Century Code is amended and reenacted as follows:

43-03-13. Qualifications. An applicant for registration ~~as an architect shall have all of the following qualifications:~~

1. ~~Be~~ Must be at least eighteen years of legal age;
2. ~~Be~~ Must be of good moral character, with rejection possible on the basis of the following:

- a. Conviction of an offense determined by the board to have a direct bearing upon an applicant's ability to serve the public as an architect or a landscape architect, or the board determines, following conviction of an offense, that the applicant is not sufficiently rehabilitated under section 12.1-33-02.1₂;
 - b. Misstatement or misrepresentation of fact by the applicant in connection with that ~~person's~~ individual's application~~;~~ or
 - c. Violation of any of the standards of conduct required of ~~licenseholders and set forth in the statutes.~~ registrants;
3. ~~Have~~ Must have successfully completed an examination for registration~~;~~
 4. ~~Have had what~~ In the case of an architect, must have the practical experience and academic training as is specified in the current guidelines published by the national council of architectural registration boards if such guidelines are adopted by the board; and
 5. Must satisfy registration criteria adopted by the board.

SECTION 9. AMENDMENT. Section 43-03-16 of the North Dakota Century Code is amended and reenacted as follows:

43-03-16. Certificates of registration issued by board - Result of examinations recorded by secretary of board. The result of every examination for registration as an architect, or a landscape architect and the evidence of qualifications, must be recorded by the secretary of the board, ~~and the~~. The board shall issue a certificate of registration to every ~~person~~ individual who ~~has passed~~ passes the examination or otherwise is entitled to receive the certificate. The secretary of the board shall maintain a list of architects and landscape architects certified under this section. This list must contain the ~~architect's~~ registrant's name, current business address, certification number, and the expiration date of the ~~architect's~~ certificate.

SECTION 10. AMENDMENT. Section 43-03-17 of the North Dakota Century Code is amended and reenacted as follows:

43-03-17. Certificates of registration - Term - Renewal. A certificate of registration as an architect or a landscape architect must be issued for ~~one year~~ upon the payment of the proper fee and, upon a term established by the board. Upon the payment of the proper fee, a certificate of registration may be renewed without examination.

SECTION 11. AMENDMENT. Section 43-03-18 of the North Dakota Century Code is amended and reenacted as follows:

43-03-18. Fees.

1. The following ~~must be the registration and renewal fees required to be paid by an architect~~ apply to architects and landscape architects:
4. a. Following examination, a an architect registration fee of not more than one hundred dollars, as set by the board.

- ~~2.~~ b. When examination is not necessary under section 43-03-15, ~~a~~ an architect registration fee of not more than one hundred dollars, as set by the board.
 - ~~3.~~ c. ~~An annual architect registration renewal fee of not~~, which need not be collected annually, but which must be based on no more than one hundred dollars per year, as set by the board.
 - d. Following examination, a landscape architect registration fee of not more than five hundred dollars, as set by the board.
 - e. A landscape architect registration renewal fee, which need not be collected annually, but which must be based on no more than five hundred dollars per year, as set by the board.
2. If in any year the board incurs expenses related to regulation of landscape architects which are in excess of the income generated through landscape architect fees for that year, the board may assess a special fee to cover these excess expenses. The board may continue an annual special fee assessed under this subsection until the excess obligations are met. Landscape architect fees set by the board may not exceed the amount reasonably necessary to regulate the profession of landscape architecture.
 3. If in any year the board incurs expenses related to regulation of architects which are in excess of the income generated through architect fees for that year, the board may assess a special fee to cover these excess expenses. The board may continue an annual special fee assessed under this subsection until the excess obligations are met. Architect fees set by the board may not exceed the amount reasonably necessary to regulate the profession of architecture.

SECTION 12. AMENDMENT. Section 43-03-19 of the North Dakota Century Code is amended and reenacted as follows:

43-03-19. Effect of failure to pay renewal fee.

1. If the holder of a certificate of registration as an architect or a landscape architect fails to pay the ~~annual~~ renewal fee or a special fee when due, that ~~person's individual's~~ certificate must be revoked unless that ~~person's individual's~~ application for renewal is made within one year after the expiration of that ~~person's individual's~~ certificate. ~~That person~~ If application for renewal is made within one year, that individual then shall pay the ~~renewal delinquent~~ fee set by the board under section 43-03-18. If a former holder applies for renewal more than one year after the expiration of that ~~person's individual's~~ certificate, that ~~person~~ individual may, in the board's discretion, be reinstated upon payment of a fee of ~~one hundred dollars~~ as set by the board.
2. ~~No~~ A certificate may ~~not~~ be revoked for nonpayment of fees unless the secretary of the board has first given at least thirty days' notice by certified mail to the holder of such certificate. The notice must be directed to the last-known address or place of residence of the delinquent.

SECTION 13. AMENDMENT. Section 43-03-20 of the North Dakota Century Code is amended and reenacted as follows:

43-03-20. Revocation of registration. The board, after a hearing upon thirty days' written notice to the certificate holder thereof, may revoke any certificate of registration of an architect or a landscape architect upon proof that:

1. Such certificate has been obtained by fraud or misrepresentation;
2. The holder of such certificate has been guilty of malfeasance, fraud, gross incompetency, or negligence in connection with the holder's practice of architecture or landscape architecture;
3. The holder of such certificate has allowed a nonregistered person or entities person to practice as an architect by the device of permitting the holder's name or stamp to be placed upon drawings, or other contract documents, not prepared by the holder or under the holder's direct supervision;
4. The holder of such certificate has been convicted of an offense determined by the board to have a direct bearing upon the holder's ability to serve the public as an architect or landscape architect; or that, following conviction of an offense, the holder is not sufficiently rehabilitated under section 12.1-33-02.1; or
5. The holder of such certificate has violated ~~any provisions~~ of this chapter.

SECTION 14. AMENDMENT. Section 43-03-21 of the North Dakota Century Code is amended and reenacted as follows:

43-03-21. Penalty. Any person willfully violating ~~the provisions of~~ this chapter is guilty of a class B misdemeanor.

SECTION 15. AMENDMENT. Section 43-03-22 of the North Dakota Century Code is amended and reenacted as follows:

43-03-22. Stamp. At the time of the issuance of the certificate of registration, the board shall furnish to the applicant, at the applicant's expense, a rubber stamp to be used by the applicant in the conduct of the applicant's practice and to be impressed upon drawings and other documents prepared by the applicant. The board shall prescribe rules governing the use of such stamp and ~~architect's applicant's~~ signature.

SECTION 16. AMENDMENT. Section 43-03-23 of the North Dakota Century Code is amended and reenacted as follows:

43-03-23. ~~Architect not liable~~ Liability for contractor's fault unless responsibility assumed - Liability for own negligence. An architect or a landscape architect is not liable for the safety of persons or property on or about a construction project site, or for the construction techniques, procedures, sequences and schedules, or for the conduct, action, errors, or omissions of any construction contractor, subcontractor, or material supplier, their agents or their employees, unless the architect or landscape architect assumes responsibility therefor by contract or by the architect's or landscape architect's actual conduct. ~~Nothing herein may be construed to~~ This section does not relieve an architect or a landscape

architect from liability from the architect's or landscape architect's negligence, whether in the architect's or landscape architect's design work or otherwise.

SECTION 17. Two new sections to chapter 43-03 of the North Dakota Century Code are created and enacted as follows:

Landscape architect and architect advisory committees. Before July 15, 2003, the board shall appoint a landscape architect advisory committee to assist in implementation and coordination of landscape architect regulation. The committee must consist of three landscape architects. Committee members serve on a voluntary basis and are not entitled to receive from the board compensation or reimbursement of expenses incurred in serving on the committee. Before July 15, 2003, the board shall appoint an architect advisory committee to assist in implementation and coordination of landscape architect regulation. The committee must consist of three architects. Committee members serve on a voluntary basis and are not entitled to receive from the board compensation or reimbursement of expenses incurred in serving on the committee.

Use of additional funds. The board may apply for, solicit, accept, and expend any contribution, grant, or gift made available from a public or private source for the purpose of regulating landscape architects.

Approved April 9, 2003

Filed April 9, 2003

CHAPTER 357

SENATE BILL NO. 2252

(Senators Cook, Freborg)
(Representatives Carlson, Wald)

CONTRACTOR LICENSING

AN ACT to amend and reenact sections 43-07-04, 43-07-14, 43-07-15, and 43-07-19 of the North Dakota Century Code, relating to contractor's license, license complaints, hearings, revocations, civil penalties, remedies, and service of process; 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 43-07-04 of the North Dakota Century Code is amended and reenacted as follows:

43-07-04. License - How obtained - Revocation. To obtain a license under this chapter, an applicant who is eighteen years of age or older shall submit, on forms the registrar prescribes, an application under oath containing a statement of the applicant's experience and qualifications as a contractor. A copy of a certificate of insurance indicating liability coverage, as proof that the applicant has secured liability insurance, must be filed with the application and the contractor shall submit a statement from the North Dakota workers compensation bureau that the contractor has secured workers' compensation coverage satisfactory to the bureau along with such other information as may be required by the registrar to assist the registrar in determining the applicant's fitness to act in the capacity of a contractor. The application must contain a statement that the applicant desires the issuance of a license under this chapter and must specify the class of license sought. 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:

1. Maintain liability insurance coverage required by this section or by section 43-07-10;
2. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
3. Maintain an active status of a corporation or registration as a foreign corporation;
4. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
5. File or renew a trade name registration as required by chapter 47-25;
6. File or renew a limited liability partnership or foreign limited liability partnership as required by chapter 45-22; or
7. File or renew a limited partnership or foreign limited partnership.

Any contractor who has been notified by the registrar that the contractor's license is not in good standing shall cease soliciting or entering into new contract projects. If the contractor fails to correct the deficiency specified in the notice by evidence satisfactory to the registrar within thirty days of the date of the notice or if the contractor solicits or enters into new contract projects while the contractor's license is not in good standing, the registrar shall use the procedures of chapter 28-32 to revoke the license of the contractor.

SECTION 2. AMENDMENT. Section 43-07-14 of the North Dakota Century Code is amended and reenacted as follows:

43-07-14. Complaint for license revocation. Any person, including an employee or agent of the registrar, may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

1. Abandonment of any contract without legal excuse. A rebuttable presumption of abandonment arises if:
 - a. A contractor fails to commence any work agreed upon in writing within sixty days of a starting date agreed upon in writing; or
 - b. A contractor fails to complete any work agreed upon in writing within ninety days of a completion date agreed upon in writing, unless the failure is due to circumstances beyond the control of the contractor.
2. Diversion of funds or property received under express agreement for the prosecution or completion of a specific contract under this chapter, or for a specified purpose in the prosecution or completion of any contract, and their application or use for any other contract obligation or purpose to defraud or deceive creditors or the owner.
3. ~~The doing of any fraudulent act by the licensee~~ Engaging in any fraudulent or deceptive acts or practices or misrepresentation as a contractor in consequence of which another is one or more persons is injured in an a total amount exceeding the amount set forth in subsection 4 of section 27-08.1-04 three thousand dollars.
4. The making of any false statement in any application for a license of renewal thereof or by violating any provisions of this chapter or being convicted of an offense the registrar determines has a direct bearing on the applicant's or licensee's ability to serve the public as a contractor as set out in section 12.1-33-02.1.
5. Engaging in work without any trade or professional license as required for such work pursuant to local, state, or federal law.
6. Failure to fully refund the contracting party's advance payment if a rebuttable presumption of abandonment has arisen under subsection 1 and the contracting party has made a request to the licensee for a refund.

The complaint must be on a form approved by the registrar and must set forth sufficient facts upon which a reasonable person could conclude that one or more of the above acts or omissions has been committed.

SECTION 3. AMENDMENT. Section 43-07-15 of the North Dakota Century Code is amended and reenacted as follows:

43-07-15. Revocation or suspension of license - Restitution - Civil penalties - Appeal - Procedure. ~~Upon the filing of such complaint, the registrar shall follow the procedures prescribed by chapter 28-32. A written complaint filed under section 43-07-14, which provides sufficient facts upon which a reasonable person could conclude that one or more of the acts or omissions set forth in section 43-07-14 has been committed, meets the requirements of subsection 4 of section 28-32-21. The registrar shall review each complaint filed under section 43-07-14. If the registrar determines a written complaint filed under section 43-07-14 provides sufficient facts upon which a reasonable person could conclude that one or more of the acts or omissions set forth in section 43-07-14 has been committed, the registrar may initiate an adjudicative proceeding in accordance with chapter 28-32. If, after an adjudicative proceeding or as part of an informal disposition under chapter 28-32, the registrar determines that the licensee has been is guilty of any of the acts an act or omissions omission charged or if the licensee admits guilt to an act or omission charged, the registrar shall may suspend or revoke the contractor's license, order a civil penalty of not more than one thousand dollars, order restitution in an amount not more than five thousand dollars, or impose some lesser sanction or remedy. The registrar may suspend the contractor's license for a period of not more than sixty months. The registrar may not renew, reinstate, or issue a new license until the licensee has paid any civil penalty or restitution imposed under this section. The registrar may bring an action in district court to recover restitution or penalties under this section. A contractor aggrieved by a decision of the registrar in revoking or suspending the contractor's license or ordering restitution or penalties may appeal the decision to the district court of that person's county of residence or Burleigh County. Any licensee may not obtain a license under any name during the period of revocation or suspension. A "licensee" whose license is revoked or suspended includes any officer, director, agent, member, or employee of the licensee. The provisions of chapter 28-32 govern any appeal and proceedings hereunder.~~

SECTION 4. AMENDMENT. Section 43-07-19 of the North Dakota Century Code is amended and reenacted as follows:

43-07-19. Nonresident contractors - Agent for service of process. Every applicant for a contractor's license who is not a resident of the state of North Dakota ~~shall furnish to the secretary of state a written appointment by which the applicant, by signing and filing the application, appoints the secretary of state as the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. Such appointment in writing shall be is~~ evidence of the contractor's consent that any such process against the contractor which is so served upon the secretary of state shall be of the same legal force and effect as if served upon the contractor personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-19.1, registered foreign limited liability companies entitled to do business in the state according to chapter 10-32, foreign limited liability partnerships entitled to do business in the state according to chapter 45-22, and foreign limited partnerships entitled to do business in the state according to chapter 45-10.1 and having a current registered agent and registered address on file in the secretary of state's office need not appoint the secretary of state as agent for service of process under this section. Within ten days after service of the summons upon the secretary of state, notice of such service with the summons and complaint in the action shall be sent to the defendant contractor at the defendant contractor's last-known address by registered or certified mail with return receipt requested and proof of such mailing shall be attached to the summons. The secretary of state shall keep a record of all process

served upon the secretary of state under this section, showing the day and hour of service. Whenever service of process was made under this section, the court, before entering a default judgment, or at any stage of the proceeding, may order such continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against the defendant contractor.

SECTION 5. CONTRACTOR COMPETENCY - LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2003-04 interim, consumer protection in regard to contractor competency and out-of-state contractors licensed in the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 358**SENATE BILL NO. 2253**

(Senator Kilzer)

**FINGERPRINTING OF MEDICAL LICENSE
APPLICANTS**

AN ACT to amend and reenact subsection 4 of section 43-17-07.1 of the North Dakota Century Code, relating to the powers of the board of medical examiners.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁵ **SECTION 1. AMENDMENT.** Subsection 4 of section 43-17-07.1 of the North Dakota Century Code is amended and reenacted as follows:

4. Require information on an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, including the federation of state medical boards action 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 or to the commission on medical competency. The board or its investigative panels may require an applicant for licensure or a licensee who is the subject of a disciplinary investigation to file a complete set of the applicant's or licensee's fingerprints taken by a law enforcement officer or a properly trained designee of a law enforcement officer and all other information necessary to complete a statewide and nationwide criminal history check with the bureau of criminal investigation for state processing and filing with the federal bureau of investigation for federal processing. All costs associated with the background check and with obtaining and processing the fingerprints are the responsibility of the licensee or applicant.

Approved April 11, 2003

Filed April 14, 2003

¹⁷⁵ Section 43-17-07.1 was also amended by section 32 of Senate Bill No. 2046, chapter 48.

CHAPTER 359**HOUSE BILL NO. 1436**

(Representative Pollert)

(Senator Klein)

PHYSICIAN LICENSURE

AN ACT to amend and reenact subsection 4 of section 43-17-18 of the North Dakota Century Code, relating to licensure of physicians.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 43-17-18 of the North Dakota Century Code is amended and reenacted as follows:

4. Special license. The board may grant a temporary special license to an applicant who is a graduate of ~~an international~~ a medical school that is not located in the United States or Canada if that applicant has met all requirements for licensure except those pertaining to postgraduate training ~~if the applicant;~~ has successfully completed ~~one year~~ two years of approved postgraduate training in the United States or Canada; and is enrolled in ~~a residency~~ an approved postgraduate training program in this state. This special license is valid only ~~for the purpose of practicing medicine within the scope of the residency training program~~ while the licensee continues to be enrolled in an approved postgraduate training program in this state.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 360

HOUSE BILL NO. 1101

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

COSMETOLOGY LICENSING AND PRACTICE

AN ACT to amend and reenact subsections 2 and 13 of section 43-11-01, sections 43-11-04 and 43-11-06, subsection 3 of section 43-11-16, section 43-11-24, subsection 3 of section 43-11-27, and subsection 1 of section 43-11-28 of the North Dakota Century Code, relating to licensing of cosmetologists and cosmetology schools.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 13 of section 43-11-01 of the North Dakota Century Code are amended and reenacted as follows:

2. "Cosmetology" means any one or combination of practices generally and usually performed by and known as the occupation of beauty culturists or cosmeticians or cosmetologists or hairdressers, or of any other person holding out as practicing cosmetology by whatever designation and within the meaning of this chapter and in and upon whatever place or premises; and in particular cosmetology includes the following or any one or a combination of practices: arranging, dressing, curling, waving, cleansing, cutting, singeing, bleaching, coloring, or similar work, upon the hair of any person by any means or with hands or mechanical or electrical apparatus or appliances, or by the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, exercising, waxing to remove hair, beautifying, or similar work on the ~~scalp, face, neck, arms, hands, bust or upper part of the~~ body, or manicuring the nails of any person.
13. "Skin care" means the use of cosmetic preparations, antiseptics, tonics, lotions, creams, or otherwise, massaging, cleansing, stimulating, manipulating, waxing to remove hair, beautifying, or similar work on the ~~scalp, face, neck, arms, hands, bust, or upper part of the~~ body of any person. The term does not include invasive care.

SECTION 2. AMENDMENT. Section 43-11-04 of the North Dakota Century Code is amended and reenacted as follows:

43-11-04. Members of board - Qualifications. Each member of the board must be a citizen of this state and a licensed cosmetologist who has had at least three years practical experience in the occupation. ~~No two members of the board may be members of or affiliated with any school of cosmetology, nor may any two members of the board be graduates of the same school of cosmetology.~~

SECTION 3. AMENDMENT. Section 43-11-06 of the North Dakota Century Code is amended and reenacted as follows:

43-11-06. Compensation of members of board - How paid. Each member of the board is entitled to receive compensation of ~~fifty~~ one hundred dollars for each day employed in the actual discharge of official duties, as determined by the board. The secretary of the board shall receive an annual salary of not more than thirteen thousand dollars to be fixed by the board, and necessary expenses actually incurred in the performance of official duties. Expenses incurred by a board member in the performance of an official function are payable by the board pursuant to sections 44-08-04 and 54-06-09. The compensation and expenses of all members of the board must be paid from the license fees and other sources of income of the board.

SECTION 4. AMENDMENT. Subsection 3 of section 43-11-16 of the North Dakota Century Code is amended and reenacted as follows:

3. Employs at least two full-time licensed instructors ~~for the first twenty-five students enrolled and one additional instructor for each additional twenty-five students enrolled or fraction thereof~~ and maintains a maximum student-to-instructor ratio of twenty-four-to-one based on current enrollment, except a school that provides training and instruction limited to esthetics or manicure shall ~~employ at least one full-time instructor for the first twelve students enrolled and one additional instructor for each additional twelve students enrolled or fraction thereof~~ maintain a maximum student-to-instructor ratio of twelve-to-one based on current enrollment;

SECTION 5. AMENDMENT. Section 43-11-24 of the North Dakota Century Code is amended and reenacted as follows:

43-11-24. Operator's license - When issued - Failure to pass examination - Reexamination - Retraining. An operator's license must be issued to any person who has:

1. Complied with section 43-11-21; and
2. Passed to the satisfaction of the board, the examination of applicants for a license to practice under this chapter.

If the applicant fails to pass the examination, the examination fee may not be returned. ~~Within one year after failing~~ If an applicant fails to pass an examination, the applicant may be examined again with the payment of a reexamination fee as set forth in section 43-11-28. ~~A person~~ An applicant who fails to pass the first reexamination must complete an additional one hundred sixty hours of training at a school of cosmetology before ~~reapplying~~ applying for ~~examination~~ a second reexamination.

SECTION 6. AMENDMENT. Subsection 3 of section 43-11-27 of the North Dakota Century Code is amended and reenacted as follows:

3. No person is entitled to renew an instructor's license unless the instructor has furnished to the board evidence of ~~attendance at an approved seminar pursuant to requirements prescribed by the board~~ completion of the continuing education established by the board by rule.

SECTION 7. AMENDMENT. Subsection 1 of section 43-11-28 of the North Dakota Century Code is amended and reenacted as follows:

1. Fees to be paid by applicants for original registrations, original licenses, annual renewals, licenses issued upon reciprocity, and examinations as required under this chapter may not exceed the following amounts:

a. Original registrations, licenses, and annual renewals:	MAXIMUM FEE:
(1) Salons, original registration	\$ 75.00 <u>80.00</u>
(2) Salons, annual renewal	\$ 25.00 <u>30.00</u>
(3) School of cosmetology, original registration	\$ 500.00 <u>505.00</u>
(4) School of cosmetology, annual renewal	\$ 200.00 <u>205.00</u>
(5) Operator, original license	\$ 40.00 <u>15.00</u>
(6) Operator, annual renewal	\$ 40.00 <u>15.00</u>
(7) Manager-operator, original license	\$ 20.00 <u>25.00</u>
(8) Manager-operator, annual renewal	\$ 45.00 <u>20.00</u>
(9) Instructor, original license	\$ 30.00 <u>35.00</u>
(10) Instructor, annual renewal	\$ 45.00 <u>20.00</u>
(11) Demonstrators, original license	\$ 25.00 <u>30.00</u>
(12) Demonstrators, annual renewal	\$ 45.00 <u>20.00</u>
(13) Reciprocity license fee	\$ 400.00 <u>105.00</u>
(14) Registration fee for student instructor	\$ 40.00 <u>15.00</u>
(15) Duplicate license	\$ 5.00 <u>10.00</u>
(16) Penalty fee for late renewal	\$ 40.00 <u>15.00</u>
(17) Certification fee	\$ 45.00 <u>20.00</u>
b. Examinations:	
(1) Operator	\$ 20.00 <u>25.00</u>
(2) Instructors	\$ 50.00 <u>55.00</u>
(3) Reexamination fee, operator's	
(a) Practical	\$ 25.00 <u>30.00</u>
(b) Written	\$ 45.00 <u>20.00</u>
(4) Reexamination fee, instructors <u>instructor's</u>	
(a) Practical	\$ 50.00 <u>55.00</u>

(b) Written

\$ ~~20.00~~ 25.00

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 361

HOUSE BILL NO. 1245

(Representatives Keiser, Devlin, Porter)
(Senators Klein, Krebsbach, O'Connell)

NURSE EDUCATION AND LICENSURE

AN ACT to create and enact a new subsection to section 43-12.1-04 and four new sections to chapter 43-12.1 of the North Dakota Century Code, relating to nursing education, practice standards, licensure, and continuing education; to amend and reenact sections 43-12.1-01 and 43-12.1-02, subsection 2 of section 43-12.1-04, and sections 43-12.1-06, 43-12.1-08, 43-12.1-09, 43-12.1-10, 43-12.1-11, and 43-12.1-15 of the North Dakota Century Code, relating to education and licensure of nurses; to provide a penalty; to provide for application; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-12.1-01 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-01. Statement of policy Scope. ~~The legislative assembly finds that the practice of nursing is directly related to the public welfare of the citizens of the state of North Dakota and is subject to regulation and control in the public interest to assure that qualified, competent practitioners and high quality standards are available. The legislative assembly recognizes that the practice of nursing is continually evolving and responding to changes within health care patterns and systems and recognizes the existence of. There are overlapping functions within the practice of nursing and other providers of health care.~~

SECTION 2. AMENDMENT. Section 43-12.1-02 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Advanced practice registered nurse" means ~~a person~~ an individual who holds a current license to practice in this state as an advanced practice registered nurse ~~and either has a graduate degree with a nursing focus or has completed the educational requirements in effect when the person was initially licensed.~~
2. "Board" means the North Dakota board of nursing.
3. "Licensed practical nurse" means ~~a person~~ an individual who holds a current license to practice in this state as a licensed practical nurse ~~and either has an associate degree with a major in nursing or has completed the educational requirements in effect when the person was initially licensed.~~
4. "Nurse" means ~~any person~~ an individual who is currently licensed as an advanced practice registered nurse, registered nurse, or licensed practical nurse.

5. "Nursing" means the performance of acts utilizing specialized knowledge, skills, and abilities for people in a variety of settings. ~~Nursing~~ The term includes the following acts, which may not be deemed to include acts of medical diagnosis or treatment or the practice of medicine as defined in chapter 43-17:
 - a. The maintenance of health and prevention of illness.
 - b. Diagnosing human responses to actual or potential health problems.
 - c. Providing supportive and restorative care and nursing treatment, medication administration, health counseling and teaching, case finding and referral of ~~persons~~ individuals who are ill, injured, or experiencing changes in the normal health processes.
 - d. Administration, teaching, supervision, delegation, and evaluation of health and nursing practices.
 - e. Collaboration with other health care professionals in the implementation of the total health care regimen and execution of the health care regimen prescribed by a health care practitioner licensed under ~~title 43~~ the laws of this state.
6. "Prescriptive practices" means assessing the need for drugs, immunizing agents, or devices and writing a prescription to be filled by a licensed pharmacist.
7. "Registered nurse" means a ~~person~~ an individual who holds a current license to practice in this state as a registered nurse ~~and either has a baccalaureate degree with a major in nursing or has completed the educational requirements in effect when the person was initially licensed~~.
8. "Specialty practice registered nurse" means a ~~person~~ an individual who holds a current license to practice in this state as a specialty practice registered nurse ~~and has the educational preparation and national certification within a defined area of nursing practice~~.
9. "~~Transitional practical nurse license~~" means a license issued by the board to a person who meets all of the requirements for licensure by endorsement as a licensed practical nurse, ~~except the educational requirements~~.
10. "~~Transitional registered nurse license~~" means a license issued by the board to a person who meets all of the requirements for licensure by endorsement as a registered nurse, ~~except the educational requirements~~.
14. "Unlicensed assistive person" means an assistant to the nurse who regardless of title is authorized by the board to perform nursing interventions delegated and supervised by a ~~licensed~~ nurse.

¹⁷⁶ **SECTION 3. AMENDMENT.** Subsection 2 of section 43-12.1-04 of the North Dakota Century Code is amended and reenacted as follows:

2. Students practicing nursing as a part of a ~~board-approved~~ an in-state nursing education program.

¹⁷⁷ **SECTION 4.** A new subsection to section 43-12.1-04 of the North Dakota Century Code is created and enacted as follows:

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 5. AMENDMENT. Section 43-12.1-06 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-06. Qualifications of board members.

1. Each registered nurse must be an eligible voting resident of this state, possess an unencumbered registered nurse license under this chapter, and be currently engaged in practice as a registered nurse. A majority of the members under this subsection must be actively engaged in practice in a nurse-patient setting.
2. Each licensed practical nurse must be an eligible voting resident of this state, possess an unencumbered practical nurse license under this chapter, and be currently engaged in practice as a licensed practical nurse. A majority of the members under this subsection must be actively engaged in practice in a nurse-patient setting.
3. Each public member must be an eligible voting resident of this state and have no employment, professional license, or financial interest with any health care entity.
4. Each member appointed to the board shall maintain the qualifications for appointment for the duration of the appointment. The governor may remove any member of the board for cause upon recommendation of two-thirds of the members of the board.

SECTION 6. AMENDMENT. Section 43-12.1-08 of the North Dakota Century Code is amended and reenacted as follows:

¹⁷⁶ Section 43-12.1-04 was also amended by section 1 of House Bill No. 1201, chapter 362, and section 4 of House Bill No. 1245, chapter 361.

¹⁷⁷ Section 43-12.1-04 was also amended by section 1 of House Bill No. 1201, chapter 362, and section 3 of House Bill No. 1245, chapter 361.

43-12.1-08. Powers and duties Duties of the board.

1. The board shall regulate the practice of nursing ~~to assure that qualified competent practitioners and high quality standards are available.~~ Regulation of the ~~profession~~ practice of nursing must ensure that ~~nea~~ no 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:
 - ~~4.~~ a. Enforce ~~the provisions of this chapter. The board has all of the duties, powers, and authority specifically granted by and necessary for the enforcement of this chapter.~~
 - ~~2.~~ b. Adopt rules necessary to administer this chapter after collaborating and consulting with North Dakota nursing associations and other affected parties.
 - ~~3.~~ c. Appoint and employ a ~~qualified~~ registered nurse to serve as executive director and approve any additional staff positions necessary to administer this chapter.
 - ~~4.~~ 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.
- ~~5.~~ Establish qualifications for nursing licensure and registration.
- ~~6.~~ Establish standards for nursing education and practice and:
 - ~~a.~~ Collaborate and consult with the appropriate nursing organizations and other affected parties in the establishment of the standards; and
 - ~~b.~~ Consult with the medical profession in the establishment of prescriptive practice standards for advanced practice registered nurses. Prescriptive practices must be consistent with the scope of practice of the advanced practice registered nurse and include evidence of a collaborative agreement with a licensed physician.
- ~~7.~~ Periodically review and approve nursing education programs.
- ~~8.~~ License and register applicants and renew and reinstate licenses and registrations.
- ~~9.~~ Establish standards for assessing the competence of licensees and registrants continuing in or returning to practice.
- ~~10.~~ e. Collect and analyze data regarding nursing education, nursing practice, and nursing resources.

44. f. Issue and renew limited licenses to individuals requiring accommodation to practice nursing.
42. g. Establish confidential programs for the rehabilitation of nurses with workplace impairments.
43. ~~Discipline applicants, licensees, and registrants for violating this chapter.~~
44. h. Establish a nursing student loan program funded by license fees to encourage ~~persons~~ individuals to enter and advance in the nursing profession.
45. i. Establish a registry of ~~persons~~ individuals licensed or registered by the board.
46. ~~Collaborate and consult with the North Dakota nurses association, North Dakota licensed practical nurses association, and other nursing specialty groups prior to the adoption of rules.~~
47. j. Report annually to the governor and nursing profession regarding the regulation of nursing in the state.
48. k. Conduct and support projects pertaining to nursing education and practice.
49. 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.
20. m. Adopt rules to allow nurses licensed by another state to receive short-term clinical education in North Dakota health care facilities.

SECTION 7. Two new sections to chapter 43-12.1 of the North Dakota Century Code are created and enacted as follows:

Nursing education programs.

1. The board shall adopt rules establishing standards for in-state nursing education programs leading to initial or advanced licensure. A nursing education program may not be provided in this state unless the board has approved the program. The board shall approve, review, and reapprove nursing education programs in this state. The board may not require a statement of intent as part of the approval process under this section.
2. The standards established under this section for a program leading to licensure as a licensed practical nurse:
 - a. Must allow for a program that offers two or more academic years of course study or the equivalent;
 - b. Must allow for a program that offers less than two academic years of course study or the equivalent; and

- c. May not allow for a program that offers less than one academic year of course study or the equivalent.
- 3. The standards established under this section for a program leading to licensure as a registered nurse:
 - a. Must allow for a program that offers four or more academic years of course study or the equivalent;
 - b. Must allow for a program that offers less than four academic years of course study or the equivalent; and
 - c. May not allow for a program that offers less than two academic years of course study or the equivalent.

Nursing practice standards. The board shall adopt rules establishing standards for nursing practice. The board shall consult with the medical profession in the establishment of prescriptive practice standards for advanced practice registered nurses. Prescriptive practices must be consistent with the scope of practice of the advanced practice registered nurse and include evidence of a collaborative agreement with a licensed physician.

SECTION 8. AMENDMENT. Section 43-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-09. Licensure - Registration Initial licensure and registration.

- 1. The board shall license and register nursing applicants. The board shall adopt rules establishing qualifications for initial nursing licensure and registration.
- 2. Each applicant who successfully meets the requirements of this section is entitled to initial licensure or registration as follows:
 - 4. a. An applicant for licensure by examination to practice as a registered nurse or licensed practical nurse shall:
 - a. (1) Submit a completed application and appropriate fee as established by the board;
 - b. (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; and. 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.
 - e. (3) Pass an examination approved by the board.

2. b. An applicant for licensure by endorsement to practice as a registered nurse or licensed practical nurse shall:
- a. (1) Submit a completed application and appropriate fee as established by the board;
 - b. (2) Submit an official transcript showing completion of a nursing education program ~~equal to or exceeding the requirements for nursing education programs in place in this state at the time the applicant qualified for initial licensure;~~ preparing for the level of licensure sought.
 - c. (3) Submit proof of initial licensure by examination with the examination meeting ~~the state~~ North Dakota requirements for licensure examinations in effect at the time the applicant qualified for initial licensure; ~~and.~~
 - d. (4) Submit evidence of current unencumbered licensure in another state ~~or territory~~ or meet continued competency requirements as established by the board.
3. ~~If an applicant for licensure by endorsement does not meet the educational requirements for the appropriate level of licensure as established by the board, a transitional license may be issued. A transitional license may be issued and renewed according to board rules. Renewal requires proof of progression towards meeting the academic requirements or thirty hours of continuing education.~~
4. c. An applicant for licensure as an advanced practice registered nurse shall:
- a. (1) Submit a completed application and appropriate fee as established by the board;
 - b. (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; ~~and.~~ 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.
 - c. (3) Possess or show evidence of application for a current unencumbered registered nurse license.
5. 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 ~~person~~ 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.

6. e. An applicant for unlicensed assistive person registration shall:
- a. (1) Submit a completed application and the appropriate fee as established by the board; ~~and.~~
 - b. (2) Provide verification of appropriate training; or evidence of certification or evaluation in the performance of basic nursing interventions.
7. f. An applicant for licensure as a specialty practice registered nurse shall:
- a. (1) Submit a completed application and appropriate ~~fees~~ fee as established by the board; .
 - b. (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; ~~and.~~ A specialty practice registered nurse applicant must have the educational preparation and national certification within a defined area of nursing practice.
 - e. (3) Possess or show evidence of application for a current unencumbered registered nurse license.

SECTION 9. AMENDMENT. Section 43-12.1-10 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-10. License - Registration - Renewal of license or registration - Reactivation.

1. ~~A~~ 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 ~~must be issued upon proof that~~ if the applicant licensee submits a renewal application, submits the appropriate fee established by the board, and meets all requirements for licensure. If a ~~person~~ licensee does not renew a license before its expiration date the license expires, the board shall reactivate that license ~~may be reinstated~~ if that ~~person~~ licensee meets the reactivation requirements set by the board.
2. ~~A~~ The board shall renew the registration of an unlicensed assistive person ~~may renew registration upon submission of~~ 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 ~~renewed~~ 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.

SECTION 10. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

(Effective through September 30, 2003) Transition from transitional nurse licenses. Before October 1, 2003, the board shall issue a licensed practical

nurse license or a registered nurse license to each individual who holds a license as a transitional practical nurse or a transitional registered nurse on August 1, 2003. A newly issued license under this section replaces the transitional license.

SECTION 11. A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

Continuing education requirements. The board shall adopt rules requiring every nurse licensed under this chapter to fulfill continuing education requirements. Before the board may renew or reactivate a license, the licensee shall submit evidence to the board establishing that the required continuing education requirements have been met.

SECTION 12. AMENDMENT. Section 43-12.1-11 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-11. Duties of licensees and registrants. Each ~~person~~ individual licensed or registered by the board shall provide information requested by the board at the time of renewal or reactivation. Each ~~person~~ individual licensed or registered by the board shall report to the board any knowledge of the performance by others of those acts or omissions that are violations of this chapter or grounds for disciplinary action as set forth in section 43-12.1-14. Each licensee or registrant shall report to the board any judgment or settlement in a professional or occupational malpractice action to which the licensee or registrant is a party. Any person, other than a licensee or registrant alleged to have violated this chapter, participating in good faith in making a report, assisting in an investigation, or furnishing information to an investigator, is immune from any civil or criminal liability that otherwise may result from reporting required by this section. For the purpose of any civil or criminal proceeding the good faith of any person required to report under this section is presumed.

SECTION 13. AMENDMENT. Section 43-12.1-15 of the North Dakota Century Code is amended and reenacted as follows:

43-12.1-15. Violation - Penalties. ~~A person may not~~ It is a class B misdemeanor for a person to willfully:

1. Buy or sell, fraudulently obtain, or furnish any questions and answers used in the licensing examination for nurses, or assist others in the performance of these acts.
2. Buy or sell, fraudulently obtain, or furnish any record ~~which that~~ might enable a ~~person~~ an individual to obtain a license in this state or assist others in the performance of these acts.
3. Practice as an advanced practice registered nurse, a specialty practice registered nurse, a registered nurse, ~~or~~ a licensed practical nurse, or an unlicensed assistive person through use of a transcript from a school of nursing, diploma, certificate of registration, license, or record ~~which that~~ was fraudulently created or obtained.
4. Practice as an advanced practice registered nurse, a specialty practice registered nurse, a registered nurse, ~~or~~ a licensed practical nurse, or an unlicensed assistive person as defined by this chapter unless licensed to do so.

5. Conduct any education program preparing a ~~person~~ an individual for nursing licensure or registration unless the program has been approved ~~or accepted~~ by the board.
6. Employ a person to practice nursing or perform nursing interventions unless the person is licensed or registered by the board.

~~Any violation of this chapter is a class B misdemeanor.~~

SECTION 14. APPLICATION. Section 5 of this Act applies to any vacancy filled after July 31, 2003. The license renewal and reactivation requirements of section 11 of this Act are effective beginning with the 2005 licensure year.

Approved April 16, 2003

Filed April 17, 2003

CHAPTER 362**HOUSE BILL NO. 1201**

(Representatives Devlin, Nelson, Weisz)
(Senators Fischer, Grindberg, Klein)

NURSE PRACTICES ACT EXCLUSIONS

AN ACT to create and enact a new subsection to section 43-12.1-04 of the North Dakota Century Code, relating to persons excluded from the Nurse Practices Act.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁸ **SECTION 1.** A new subsection to section 43-12.1-04 of the North Dakota Century Code is created and enacted as follows:

An individual, including a feeding assistant, performing nonhands-on tasks while employed in a medicare-funded organization.

Approved March 7, 2003
Filed March 7, 2003

¹⁷⁸ Section 43-12.1-04 was also amended by section 4 of House Bill No. 1245, chapter 361, and section 3 of House Bill No. 1245, chapter 361.

CHAPTER 363

HOUSE BILL NO. 1256

(Representatives M. Klein, N. Johnson, Kasper)

(Senator Espegard)

ENGINEER REGISTRATION AND EDUCATION

AN ACT to create and enact a new subsection to section 43-19.1-02, a new subsection to section 43-19.1-14, a new subsection to section 43-19.1-15, and a new section to chapter 43-19.1 of the North Dakota Century Code, relating to definitions, registration of professional engineers, qualifications of engineers in training, and continuing professional education; and to amend and reenact subsections 2 and 3 of section 43-19.1-14 of the North Dakota Century Code, relating to registration of professional engineers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 43-19.1-02 of the North Dakota Century Code is created and enacted as follows:

"Retired registrant" means a duly registered professional engineer or land surveyor who is not engaged in active professional practice and is not required to meet the continuing professional education requirements as prescribed by the board. A retired registrant is issued a certificate of registration indicating "retired" status.

SECTION 2. AMENDMENT. Subsections 2 and 3 of section 43-19.1-14 of the North Dakota Century Code are amended and reenacted as follows:

2. Is a person who has satisfactorily completed a four-year engineering ~~or related~~ curriculum not approved by the board, and eight years or more of progressive experience in engineering work of a character and grade which indicates to the board that the applicant is competent to practice engineering, and who ~~passes a written examination of not less than eight hours in the fundamentals of engineering designed to show knowledge and skill approximating that obtained through graduation in an approved four-year engineering or related curriculum~~ holds a valid engineer-in-training certificate.
3. Is a person with a specific record of at least twenty years of lawful practice in engineering work during at least ten years of which the applicant has been in responsible charge of important engineering work which is of a grade and character which indicates to the board that the applicant is competent to practice engineering, and who holds a valid engineer-in-training certificate as of July 1, 2004.

SECTION 3. A new subsection to section 43-19.1-14 of the North Dakota Century Code is created and enacted as follows:

Is a person who has satisfactorily completed a four-year or more engineering-related curriculum and twelve years or more of progressive experience in engineering work of a character and grade which

indicates to the board that the applicant is competent to practice engineering and holds a valid engineer-in-training certificate.

SECTION 4. A new subsection to section 43-19.1-15 of the North Dakota Century Code is created and enacted as follows:

An applicant who has satisfactorily completed a four-year engineering-related curriculum and who has a specific record of six or more years of experience in engineering work of a grade and character satisfactory to the board and who passes the board's written examination of not less than eight hours in the fundamentals of engineering.

SECTION 5. A new section to chapter 43-19.1 of the North Dakota Century Code is created and enacted as follows:

Continuing professional education - Rules. The board shall adopt rules to establish continuing education requirements for professional engineers and land surveyors. Compliance with these rules must be documented at the times, and in the manner, as is required by the board. A professional engineer or land surveyor who is exempt under subsection 5 of section 43-19.1-29 but who has voluntarily registered under this chapter is exempt from the continuing professional education requirements under this section.

Approved April 9, 2003

Filed April 9, 2003

CHAPTER 364

HOUSE BILL NO. 1236

(Representatives N. Johnson, Kasper, M. Klein)
(Senator Espegard)

ENGINEER AND SURVEYOR FEES AND DISCIPLINARY ACTIONS

AN ACT to amend and reenact sections 43-19.1-18 and 43-19.1-25 of the North Dakota Century Code, relating to professional engineer and land surveyor registration fees and recovery of legal costs in disciplinary matters.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-19.1-18 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-18. Registration fees. The board shall establish registration fees for professional engineers, engineers-in-training, land surveyors, and land surveyors-in-training in the amount the board determines necessary to accomplish the purposes of the board as provided in this chapter. The registration fees may not exceed the amount of ~~fifty~~ one hundred dollars for a one-year period or ~~one~~ two hundred dollars for a two-year period. If the board denies the issuance of a certificate to an applicant, the fee paid may be retained as an application fee.

SECTION 2. AMENDMENT. Section 43-19.1-25 of the North Dakota Century Code is amended and reenacted as follows:

43-19.1-25. Disciplinary action - Revocations, suspensions, or reprimand. The board has the power to suspend, refuse to renew, or revoke the certificate of registration of, or reprimand, any registrant; In an order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a registrant, the board may direct a registrant to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board and its investigative panels in the investigation and prosecution of the case. Notwithstanding section 28-32-50, if a registrant is the prevailing party in an administrative appeal of a disciplinary action taken by the board under this section, the board shall pay the registrant's reasonable and actual costs, including reasonable attorney's fees. These powers apply to any registrant who is found guilty of any of the following:

1. The practice of any fraud or deceit in obtaining a certificate of registration.
2. Any gross negligence, incompetence, or misconduct in the practice of engineering or land surveying.
3. Any offense determined by the board to have a direct bearing upon a person's ability to serve the public as a professional engineer and land surveyor; or when the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.

4. The violation of the code of ethics adopted and promulgated by the board.

Approved April 18, 2003

Filed April 18, 2003

CHAPTER 365**SENATE BILL NO. 2217**

(Senators Andrist, Erbele, Krauter, Nichols)

DENTAL HYGIENIST ANESTHESIA ADMINISTRATION

AN ACT to create and enact a new section to chapter 43-20 of the North Dakota Century Code, relating to the administration of anesthesia by dental hygienists under dental supervision.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 43-20 of the North Dakota Century Code is created and enacted as follows:

Supervised administration of anesthesia - Board rules. A licensed dentist may delegate to a dental hygienist licensed by the board the administration of block and infiltration anesthesia to a patient who is at least eighteen years old. The dental hygienist must be under the direct supervision of a dentist and the dental hygienist must complete the educational requirements as required by the commission on dental accreditation and approved by the board. The board shall adopt rules to implement this section.

Approved April 8, 2003

Filed April 9, 2003

CHAPTER 366**SENATE BILL NO. 2145**

(Senators J. Lee, Lyson)
(Representatives Weiler, Potter, Wieland, Carlson)
(At the request of the Real Estate Commission)

REAL ESTATE BROKER AND SALESPERSON FINES

AN ACT to amend and reenact subsections 1, 3, and 4 of section 43-23-11.1 of the North Dakota Century Code, relating to real estate broker and real estate salesperson fines and recovery of investigation and legal fees; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1, 3, and 4 of section 43-23-11.1 of the North Dakota Century Code are amended and reenacted as follows:

1. The commission upon its own motion may, and upon the verified complaint in writing of any person shall, investigate the activities of any licensee or any person who assumes to act in such capacity within the state, and has the power to suspend or revoke a license, impose a monetary fine and actual costs incurred by the commission in the investigation and prosecution of the complaint, require course attendance, or issue a letter of reprimand, or any combination thereof, when the licensee, in performing or attempting to perform any of the acts included within the scope of this chapter, has performed one or more of the following:
 - a. Making a material false statement in the licensee's application for a license or in any information furnished to the commission.
 - b. Making any substantial and willful misrepresentation with reference to a real estate transaction which is injurious to any party.
 - c. Making any false promise of a character such as to influence, persuade, or induce a party to a real estate transaction to that person's injury or damage.
 - d. Acting for more than one party in a transaction without the knowledge and consent of all parties to that transaction for whom the licensee acts.
 - e. Failure to account for or to remit, within a reasonable time, any moneys coming into the licensee's possession belonging to others; commingling funds of others with the licensee's own, failing to keep such funds of others in an escrow or trust account with a bank or other recognized depository in this state, or keeping records relative to the deposit, which must contain such information as may be prescribed by the rules and regulations of the commission relative thereto.

- f. Been convicted or pleaded guilty or nolo contendere before any court of any felony, or of a misdemeanor involving theft, forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or other similar offense. A certified copy of the record of conviction is conclusive evidence of conviction in such cases.
- g. Claiming or taking of any secret or undisclosed amount of compensation or commission or the failure of a licensee to reveal to the licensee's principal or employer the full amount of such licensee's compensation or commission in connection with any acts for which a license is required under this chapter.
- h. Failing or refusing upon demand to produce any document, book, or record in the licensee's possession or under that person's control, concerning any real estate transaction under investigation by the commission.
- i. Offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on any terms other than those authorized by the owner or agent.
- j. Refusing, because of race, color, national origin, or ethnic group, to show, sell, lease, or rent any real estate to prospective renters, lessees, or purchasers.
- k. Failing or refusing upon demand to furnish copies of any document pertaining to any transaction dealing with real estate to any person whose signature is affixed thereto.
- l. Paying compensation or commission in connection with any real estate sale, lease, or other transaction to any person who is not licensed as a real estate broker or real estate salesperson under this chapter.
- m. Failing to disclose to an owner the licensee's intention or true position if the licensee directly or indirectly through a third party purchases for himself or herself or acquires or intends to acquire any interest in or any option to purchase property which has been listed with the licensee's office for sale or lease.
- n. Failure to include a fixed date of expiration in any written listing agreement and failure to leave a copy of such agreement with the principal.
- o. Failure by a broker to deliver to the seller in every real estate transaction, at the time said transaction is consummated, a complete, detailed closing statement, showing all of the receipts and disbursements handled by such broker for the seller; also failure to deliver to the buyer a complete statement showing all money received in said transaction from such buyer and how and for what the same was disbursed, and to retain true copies of such statements in the broker's files.
- p. Violating any provisions of this chapter or rule or regulation promulgated by the commission.

- q. Violation of any provision of such realtor's code of ethics as the commission has or may promulgate and adopt.
 - r. Accepting a commission or valuable consideration as a real estate salesperson for the performance of any of the acts specified in this chapter, or by rule or regulation of the commission, from any person except the licensed real estate broker under whom the individual is licensed as a salesperson.
 - s. If the licensee is a broker, allowing any unlicensed salesperson to do any act or engage in any activity regulated by this chapter or under rule or regulation of the commission, which is carried on in the name of or under the authority of the broker.
 - t. Failure of a salesperson to place with that person's employing broker for deposit in the brokerage trust account all real estate trust moneys received by the salesperson within twenty-four hours of the time of receipt; or failure of the employing broker to place such moneys for deposit within twenty-four hours of the time of receipt from the salesperson. Provided that if trust money is received on a day prior to a holiday or on another day prior to which the depository is closed where the trust fund is maintained, the moneys must then be deposited during the next business day of the depository.
 - u. Failure of the licensee to reduce an offer to writing where a proposed purchaser requests that such offer be submitted to the seller, or failure of the licensee to submit all offers to a seller when such offers are received prior to the seller accepting an offer in writing and until the broker has knowledge of such acceptance.
 - v. Any other conduct, whether of the same or of a different character than specified in this subsection, which constitutes dishonesty or fraudulent conduct, whether arising within or without the pursuit of that person's licensed privilege.
 - w. Any conduct which in the determination of the commission does not meet the generally accepted standard of expertise, care, or professional ability expected of real estate brokers or salespersons, provided that any disciplinary measures by the commission under this subdivision must be limited to the issuance of a letter of reprimand to the offending licensee.
3. ~~No~~ A license may not be revoked or suspended, ~~ne~~ a monetary fine or actual costs may not be imposed, course attendance may not be required, nor any letter of reprimand issued except after hearing before the commission with a copy of the charges having been duly served upon the licensee and upon sustaining of the charges for suspension, revocation, fine, payment of actual costs incurred, required course attendance, or reprimand. The provisions of chapter 28-32 apply to and govern all proceedings for suspension, revocation, fine, payment of actual costs incurred, required course attendance, or reprimand of licenses or licensees.

4. ~~Any monetary fine imposed may not exceed the sum of one thousand dollars.~~ In any order or decision issued by the commission in resolution of a disciplinary proceeding in which disciplinary action is imposed against a licensee, the commission may direct the licensee to pay a fine not to exceed two thousand five hundred dollars and actual costs, including attorney's fees, incurred by the commission in the investigation and prosecution of the case. All fines collected must be deposited in the commission's license fee account.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 367

SENATE BILL NO. 2146

(Senators J. Lee, Lyson)
(Representatives Weiler, Potter)
(At the request of the Real Estate Commission)

REAL ESTATE BROKER LICENSES AND FEES

AN ACT to amend and reenact sections 43-23-13 and 43-23-13.1 of the North Dakota Century Code, relating to real estate broker and real estate salesperson license and renewal fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-23-13 of the North Dakota Century Code is amended and reenacted as follows:

43-23-13. Fees. Fees for real estate brokers and real estate salespersons are as follows:

1. A fee of ~~sixty~~ not more than two hundred dollars, as set by the commission, must accompany an application for an individual's real estate broker's license and for each annual renewal of the license.
2. For each license issued to a partnership, association, corporation, limited liability company, trust, cooperative, or other firm or entity, foreign or domestic, and for each annual renewal of the license, a fee of ~~sixty~~ not more than two hundred dollars, as set by the commission.
3. For an individual's real estate salesperson's license and for each annual renewal of the license, a fee of ~~fifty~~ not more than two hundred dollars, as set by the commission.
4. ~~For each additional office or place of business, an annual fee of ten dollars~~ The commission shall set and collect reasonable fees to help offset the cost of operating the commission.
5. ~~For each change of office or place of business, a fee of ten dollars.~~
6. ~~For each transfer of a real estate salesperson's license, a fee of ten dollars.~~
7. ~~For each duplicate license, where the original license is lost or destroyed and affidavit made thereof, a fee of ten dollars.~~
8. ~~For each examination given to an applicant, before a license is issued, a fee in an amount equal to the actual costs of the examination and its administration.~~
9. ~~For each change of name, a fee of ten dollars.~~

SECTION 2. AMENDMENT. Section 43-23-13.1 of the North Dakota Century Code is amended and reenacted as follows:

43-23-13.1. License renewal. Every person licensed to practice as a real estate broker or real estate salesperson must register annually with the commission and pay the appropriate annual renewal fee as provided in section 43-23-13. The application for renewal must be accompanied by such certification as required by this chapter and rules of the commission to show compliance with the educational requirements of sections 43-23-08 and 43-23-08.2, and is to be submitted to the commission with the appropriate fee no later than December thirty-first of each year. A licensee who fails to file a timely application for the renewal of any license and pay the renewal fee may file a late renewal application, together with the required educational certification, before March first of the subsequent year and shall pay, in addition to the renewal fee, ~~the sum of ten dollars~~ a late fee as set by the commission for each month or fraction thereof after January first. Any license not renewed by March first must be canceled. The cancellation must be performed without any notice or opportunity for hearing. Any person whose license has been canceled and who desires relicensure must be required to satisfy the application and examination requirements for prospective licensees in accordance with this chapter and rules of the commission.

No licensee may engage in any activity after December thirty-first of any year for which a license is required under this chapter unless that person's license has been renewed by the commission.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 368

HOUSE BILL NO. 1136

(Industry, Business and Labor Committee)

(At the request of the North Dakota Real Estate Appraiser
Qualifications and Ethics Board)

REAL ESTATE APPRAISER LICENSING

AN ACT to amend and reenact subsection 1 of section 43-23.3-03, subsection 1 of section 43-23.3-08, sections 43-23.3-10, 43-23.3-12, and 43-23.3-19, and subsection 1 of section 43-23.3-22 of the North Dakota Century Code, relating to licensing of real estate appraisers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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, and certified 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, issue pocket cards and permits to practice, and maintain a registry of the names and addresses of individuals licensed and certified.
 - d. Discipline permittees.
 - e. Hold meetings, hearings, and examinations in places and at times as it designates and maintain records of board activities.
 - f. Adopt rules, pursuant to chapter 28-32, necessary to implement this chapter or carry out the requirements imposed by federal law.

SECTION 2. AMENDMENT. Subsection 1 of section 43-23.3-08 of the North Dakota Century Code is amended and reenacted as follows:

1. An applicant for a permit as an apprentice appraiser must have a high school education or its equivalent and must successfully complete ~~fifteen classroom hours related to the standards of professional practice and this chapter~~ the education requirements established by the board.

SECTION 3. AMENDMENT. Section 43-23.3-10 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-10. Term of permit. ~~The term of a permit is one year from the date of issuance.~~ Permits expire on December thirty-first of each year. The expiration

date of the permit must appear on the permit and no other notice of its expiration need be given to the permittee.

SECTION 4. AMENDMENT. Section 43-23.3-12 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-12. Permit renewal. To renew a permit ~~to practice as a licensed or a certified appraiser~~, the permittee shall apply to the board and pay the required fee. With the application for renewal, the appraiser shall present evidence of having completed the continuing education requirements for renewal. ~~A person who has temporarily surrendered a permit may not act as an appraiser, but may reactivate a permit without an examination. That person is~~ The board may adopt rules to allow permits to be assigned to inactive status. Permits assigned to inactive status are subject to disciplinary action and activation of an inactive permit may be subject to a denial by the board.

SECTION 5. AMENDMENT. Section 43-23.3-19 of the North Dakota Century Code is amended and reenacted as follows:

43-23.3-19. Continuing education. ~~Beginning July 1, 1992, and every three years thereafter, each~~ Each applicant for renewal of a permit shall submit proof of participation in the minimum number of continuing education hours required and approved by the board. The board shall adopt rules for the implementation of continuing education requirements to assure that permit renewal applicants have current knowledge of appraisal theories, practices, and techniques that provide a high degree of service and protection to the public. The rules must establish:

1. Policies and procedures for obtaining board approval of courses of instruction.
2. Standards, policies, and procedures to be applied by the board in evaluating an applicant's claims of equivalency.
3. Standards, monitoring methods, and systems for recording attendance by course sponsors.

SECTION 6. AMENDMENT. Subsection 1 of section 43-23.3-22 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~The board may, and upon the verified complaint in writing of any person shall, investigate the activities of any person and may deny an application for, refuse to renew, suspend, or revoke a permit, impose a monetary fine, or issue a letter of reprimand, when the person~~ applicant or permittee has:
 - a. Procured or attempted to procure a permit by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, or through fraud or misrepresentation.
 - b. Failed to meet the minimum qualifications established under this chapter.
 - c. Paid money other than provided for by this chapter to any member or employee of the board to procure a permit.

- d. Been convicted, including a conviction based upon a plea of guilty or nolo contendere, of a felony or of a crime that is substantially related to the qualifications, functions, and duties of a person developing and communicating appraisals to others.
- e. Performed an act involving dishonesty, fraud, or misrepresentation with the intent to benefit substantially that person or another person, or with the intent to injure substantially another person.
- f. Violated any standard for the development or communication of appraisals as provided in this chapter.
- g. Failed or refused without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.
- h. Acted with gross negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal.
- i. Willfully violated this chapter or rules of the board.
- j. Accepted an appraisal assignment when the employment is contingent upon the reporting of a predetermined estimate, analysis, or opinion, or where the fee is contingent upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment.
- k. Violated the confidential nature of governmental records to which the person gained access through employment or engagement as an appraiser by a governmental agency.
- l. Had entry of a civil judgment against the person on grounds of fraud, misrepresentation, or deceit in the making of an appraisal.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 369**SENATE BILL NO. 2365**

(Senators Erbele, Mathern)
(Representatives Kretschmar, Maragos)

MASSAGE THERAPIST CONTINUING EDUCATION

AN ACT to amend and reenact subsection 2 of section 43-25-09 of the North Dakota Century Code, relating to massage therapist continuing education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 43-25-09 of the North Dakota Century Code is amended and reenacted as follows:

2. On or before January first of each year, each licensed massage therapist shall pay to the secretary-treasurer of the board a renewal fee of one hundred dollars or a lesser amount established by the board. Attendance at postgraduate work of at least eighteen continuing education units a year as prescribed by the board is a further requirement for renewal of the license. The board may accept continuing education attained by remote means. No more than six units of a licensee's annual continuing education requirements may be by remote education. To qualify as continuing education, the remote education must be sponsored by a nationally recognized provider and must be board-approved for content and suitability.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 370

SENATE BILL NO. 2378

(Senators Nething, Andrist, Lyson)
(Representative Hawken)

DENTIST LOAN REPAYMENT PROGRAM

AN ACT to amend and reenact subsection 3 of section 43-28.1-03 and subsection 1 of section 43-28.1-04 of the North Dakota Century Code, relating to selection criteria and eligibility for loan repayment for dentists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-28.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~One out of every three dentists~~ Dentists selected annually shall contract to provide full-time dental services for a minimum of four years in one or more selected communities ~~having fewer than two thousand five hundred residents. One out of every three dentists selected annually shall contract to provide full-time dental services for a minimum of four years in one or more selected communities having fewer than ten thousand residents. One out of every three dentists selected annually shall contract to provide full-time dental services for a minimum of four years in one or more selected communities having ten thousand or more residents.~~

SECTION 2. AMENDMENT. Subsection 1 of section 43-28.1-04 of the North Dakota Century Code is amended and reenacted as follows:

1. The state health council shall apply the following criteria in selecting a community with a defined need for the services of a dentist:
 - a. The size of the community, with rural communities with a population under twenty-five hundred given highest priority, communities with a population between twenty-five hundred and ten thousand given the next highest priority, and communities with a population greater than ten thousand given the lowest priority. In cities with a population greater than ten thousand, first priority must be given to dentists who commit to satellite to underserved areas and then to dental specialists in cities with an identified need for a specialist.
 - b. The number of dentists practicing in the community and the surrounding area.
 - c. The access by residents to dentists practicing in the community and the surrounding area.
 - d. The mix of dental specialties in the community and surrounding area.

- e. The degree to which residents support the addition of a dentist within the community.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 371**SENATE BILL NO. 2139**

(Agriculture Committee)

(At the request of the Board of Veterinary Medical Examiners)

VETERINARY MEDICINE TEMPORARY PERMITS

AN ACT to amend and reenact subsection 3 of section 43-29-07.2 of the North Dakota Century Code, relating to temporary permits to practice veterinary medicine.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 43-29-07.2 of the North Dakota Century Code is amended and reenacted as follows:

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.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 372

HOUSE BILL NO. 1279 (Representatives Wrangham, Carlisle) (Senator Klein)

HEARING AID SPECIALISTS

AN ACT to create and enact a new subsection to section 43-33-14 of the North Dakota Century Code, relating to duties of the board of hearing aid specialists; and to amend and reenact section 43-33-01, subsection 2 of section 43-33-02, section 43-33-02.1, subsection 2 of section 43-33-03, section 43-33-04, subsection 2 of section 43-33-08, sections 43-33-10 and 43-33-11, subsection 2 of section 43-33-12, section 43-33-15, subsection 2 of section 43-37-03, and subdivision m of subsection 1 of section 43-46-01 of the North Dakota Century Code, relating to hearing aid specialists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-33-01 of the North Dakota Century Code is amended and reenacted as follows:

43-33-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Board" means the board of hearing ~~instrument dispensers~~ aid specialists.
2. "Hearing aid" or "hearing instrument" means any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories including earmold, but excluding batteries, cords, and earmold tubing.
3. "License" means a license issued under this chapter to a hearing instrument dispensers aid specialist.
4. "Licensee" means a hearing aid specialist licensed under this chapter.
5. "Practice of fitting and dispensing hearing instruments" means the measurement of human hearing to determine hearing loss by means of an audiometer or by any means solely for the purpose of making selections, adaptations, repairs, or sale of hearing instruments. The term also includes the making of impressions for earmolds. A ~~dispenser licensee~~, at the request of a physician or member of related professions, may make audiograms for the professional's use in consultation with the hard-of-hearing.
- ~~5.~~ 6. "Sell" or "sale" includes a transfer of title or of the right to use by lease, bailment, or any other contract. This excludes wholesale to distributors or dispensers.
- ~~6.~~ 7. "Trainee permit" means a temporary permit issued while an applicant is in training to become a ~~licensed hearing instrument dispenser licensee~~.

SECTION 2. AMENDMENT. Subsection 2 of section 43-33-02 of the North Dakota Century Code is amended and reenacted as follows:

2. This chapter does not prohibit a person maintaining an established business address from engaging in the business of selling or offering for sale hearing instruments at retail without a license if that person employs only properly licensed individuals in the direct sale and fitting of such products. Such persons shall file annually with the board a list of all ~~licensed hearing instrument dispensers~~ licensees directly or indirectly employed by it. Those persons shall also file with the board a statement on a form approved by the board that they submit themselves to the rules of the board and the provisions of this chapter.

SECTION 3. AMENDMENT. Section 43-33-02.1 of the North Dakota Century Code is amended and reenacted as follows:

43-33-02.1. Conviction not bar to licensure - Exceptions. Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a hearing ~~instrument dispenser~~ aid specialist, or determines that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 4. AMENDMENT. Subsection 2 of section 43-33-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The receipt must bear in no smaller type than the largest used in the body copy portion the following: Any examination or representation made by a licensed hearing ~~instrument dispenser~~ aid specialist in connection with the fitting and selling of this hearing instrument is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore, must not be regarded as medical opinion or advice.

SECTION 5. AMENDMENT. Section 43-33-04 of the North Dakota Century Code is amended and reenacted as follows:

43-33-04. Persons and practices not affected. This chapter does not prevent or restrict:

1. A person from engaging in the practice of measuring human hearing for the purpose of selection of hearing instruments if the person or organization employing that person does not sell hearing instruments.
2. A person employed as a hearing ~~instrument dispenser~~ aid specialist by the federal government from engaging in the practice of fitting and dispensing hearing instruments if the person performs the practice solely within the confines or under the jurisdiction of the government of the United States.
3. Activities and services of a person pursuing a course of study leading to a graduate degree in audiology at a college or university if the activities or services are under the direct supervision of a ~~licensed dispenser~~ licensee, constitute a part of a supervised course of study, and the person is designated an audiology intern or trainee or by another title clearly indicating the training status appropriate to the level of training.

SECTION 6. AMENDMENT. Subsection 2 of section 43-33-08 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon receiving an application accompanied by a fee as established by the board, the board shall issue a trainee permit that permits the applicant to engage in the training of fitting and sale of hearing instruments for a period of one year under the direct supervision of a ~~person holding a valid hearing instrument dispenser license~~ licensee. The trainee shall train in the same place of business as that of the supervisor and must complete at least thirty hours of book and visual aid training and at least ten hours of training with an audiometer, as well as a minimum of one week with the supervisor before the trainee's first public contact alone. A trainee may not deal with the public outside the supervisor's office or place of business until these requirements have been fulfilled. After this initial period of training, the trainee must spend one day per week in the office or place of business with the supervisor. The trainee may not make any sale of a hearing instrument without first consulting with the supervisor and obtaining the supervisor's approval for the sale.

SECTION 7. AMENDMENT. Section 43-33-10 of the North Dakota Century Code is amended and reenacted as follows:

43-33-10. Notice to board of place of business - Notice to holders of license licensees - How given by board.

1. A ~~person who holds a license~~ licensee shall notify the board in writing of a regular address of the place or places where the ~~person~~ licensee engages or intends to engage in the fitting or the sale of hearing instruments.
2. The board shall keep a record of the place of business of ~~persons who hold licenses~~ licensees.
3. Any notice required to be given by the board to a ~~person who holds a license~~ licensee must be mailed by certified mail at the address of the last place of business of which the person has notified the board.
4. The board shall keep a record of the trainees, their place of training, and their supervisors.

SECTION 8. AMENDMENT. Section 43-33-11 of the North Dakota Century Code is amended and reenacted as follows:

43-33-11. Annual renewal of license - Fees - Continuing education - Effect of failure to renew. Each ~~person who engages in the fitting and sale of hearing instruments~~ licensee shall annually, before the expiration of the person's license, pay to the board the proper fees, together with a certificate showing attendance for a minimum of ten hours of continuing education per calendar year at schools or seminars approved by the board as defined by rule, pertaining to the fitting and sales of hearing instruments, for a renewal of a license. A thirty-day grace period must be allowed after the expiration of a license when a license may be renewed on payment of the proper fees together with the certificate of continuing education to the board. After expiration of the grace period, the board may renew a license upon the payment of the proper fees together with the certificate of continuing education to the board. A ~~person~~ licensee who applies for renewal, whose license

has expired, may not be required to submit to an examination as a condition to renewal, if the renewal application is made within two years from the date of the expiration and is accompanied with a certificate of continuing education during the twelve months immediately preceding the date of application.

SECTION 9. AMENDMENT. Subsection 2 of section 43-33-12 of the North Dakota Century Code is amended and reenacted as follows:

2. The board may revoke or suspend a person's license for any of the following causes:
 - a. The conviction of an offense determined by the board to have a direct bearing upon a person's ability to serve the public as a hearing ~~instrument dispenser~~ aid specialist, or the board determines, following conviction of any offense, that a person is not sufficiently rehabilitated under section 12.1-33-02.1.
 - b. Procuring of a license by fraud or deceit.
 - c. Unethical conduct. Unethical conduct means:
 - (1) Obtaining any fee or making any sale by fraud or misrepresentation.
 - (2) Knowingly employing, directly or indirectly, any suspended, or unregistered person to perform any work covered by this chapter.
 - (3) Using, or causing or promoting the use of, any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful.
 - (4) Advertising a particular model or type of hearing instrument for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.
 - (5) Representing that the service or advice of a person licensed to practice medicine will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing instruments when that is not true, or using the word "doctor", "clinic", "audiologist", or similar words, abbreviations, or symbols which tend to connote the medical or audiological profession when that is not accurate, or use of the titles "hearing instrument specialist", "hearing aid specialist", "board-certified hearing aid specialist", or "board-certified hearing instrument specialist" when the qualifying requirements have not been met through the ~~national international~~ hearing ~~aid~~ society or national board for certification in hearing instrument sciences.
 - (6) Habitual intemperance.

- (7) Gross immorality.
 - (8) Permitting another to use the person's license.
 - (9) Advertising a manufacturer's product or using a manufacturer's name or trademark that implies a relationship with the manufacturer which does not exist.
 - (10) To directly or indirectly give or offer to give, or permit or cause to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence them or have them influence others to purchase or contract to purchase products sold or offered for sale by a ~~hearing instrument dispenser licensee~~, or to influence persons to refrain from dealing in the products of competitors.
 - (11) Sale of a hearing instrument to a person without adequate and proper audiometric testing.
 - (12) Sale of a hearing instrument to a person where the need for a hearing instrument has not been established after adequate and proper audiometric testing.
- d. Conducting business while suffering from a contagious or infectious disease.
 - e. Engaging in the fitting and sale of hearing instruments under a false name or alias with fraudulent intent.
 - f. For any violation of this chapter.
 - g. The fitting and sale of a hearing instrument to any person under eighteen years of age unless within six months before the fitting the person to be fitted has been examined by a physician and audiologist to determine whether there exist any physical deficiencies that would prohibit the effective use of a hearing instrument.

SECTION 10. A new subsection to section 43-33-14 of the North Dakota Century Code is created and enacted as follows:

At the board's discretion, provide funds to assist in providing continuing education for licensees.

SECTION 11. AMENDMENT. Section 43-33-15 of the North Dakota Century Code is amended and reenacted as follows:

43-33-15. Board of hearing ~~instrument dispensers~~ aid specialists.

1. There is established a board of hearing ~~instrument dispensers~~ aid specialists to carry out this chapter.
2. Members of the board must be residents of the state. The board consists of four ~~hearing instrument dispensers licensees~~ who are not audiologists or otolaryngologists, one otolaryngologist, three licensees

~~who are audiologists, and two consumers. Each hearing instrument dispenser aid specialist on the board must be primarily engaged as a hearing instrument dispenser aid specialist, must have at least five years of experience in this state, and must hold a valid license as a hearing instrument dispenser aid specialist.~~

3. The governor shall appoint the members of the board. The term of office of each member is four years. Before a member's term expires, the governor shall appoint a successor to assume the member's duties at the expiration of the term. A vacancy in the office of a member must be filled by appointment for the unexpired term. The members shall ~~annually~~ designate annually one member to serve as chairman and another to serve as secretary-treasurer. ~~No~~ A member of the board may not be reappointed to the board until at least one year after the expiration of that person's second term of office.
4. Except for the secretary-treasurer, each member shall serve without compensation except mileage and travel expenses while engaged in the performance of the duties of the office as is provided for state employees. The board shall establish the amount of compensation for the secretary-treasurer.

SECTION 12. AMENDMENT. Subsection 2 of section 43-37-03 of the North Dakota Century Code is amended and reenacted as follows:

2. A hearing aid ~~dealer~~ specialist from engaging in testing of hearing and other practices and procedures used solely for the fitting and selling of hearing aids in this state as provided in chapter 43-33.

SECTION 13. AMENDMENT. Subdivision m of subsection 1 of section 43-46-01 of the North Dakota Century Code is amended and reenacted as follows:

- m. The board ~~for licensing of~~ hearing aid dealers and fitters specialists;

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 373

SENATE BILL NO. 2202

(Senators Erbele, Espegard, Syverson)
(Representatives DeKrey, Headland, Pollert)

WATER WELL CONTRACTOR CONTINUING EDUCATION

AN ACT to amend and reenact sections 43-35-17 and 43-35-23 of the North Dakota Century Code, relating to continuing education requirements for water well contractors; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-35-17 of the North Dakota Century Code is amended and reenacted as follows:

43-35-17. Renewal of certificate - Continuing education. A certificate issued under this chapter is valid for up to one year and expires on the thirty-first day of December in the year of issuance. The certificate may be renewed by the board upon application. Every two years the application must include reporting information that the applicant completed ~~twelve~~ six hours of continuing education during the two-year reporting cycle which meets continuing education standards adopted by the board. The application must be made before April first in the year following the certificate's expiration, must be accompanied by a fee in an amount set by the board not to exceed fifty dollars, and must be accompanied by a bond as provided in section 43-35-14.

SECTION 2. AMENDMENT. Section 43-35-23 of the North Dakota Century Code is amended and reenacted as follows:

43-35-23. Continuing education - Preapproval requirements. Each certificate holder shall earn at least ~~twelve~~ six hours of board-approved continuing education during every two-year reporting cycle to qualify for certificate renewal, except a new certificate holder is not required to earn continuing education until the second renewal year following initial certification. Continuing education coursework may be provided by the national ground water association, the North Dakota well drillers association, incorporated, a board-sponsored workshop, the state department of health, the state water commission, or by any board-approved course provider. A continuing education course must be preapproved by the board unless otherwise provided under this section. A continuing education course provider or a certificate holder shall request preapproval of continuing education coursework by submitting to the board a course outline, the instructor's name, the length of the training, and an explanation of how the training relates to the construction and service of water wells. A certificate holder may request approval of education that was not preapproved by submitting to the board verification of attendance, a course outline, and an explanation of why preapproval was not obtained. The board shall determine on a case-by-case basis whether to approve education that was not preapproved.

SECTION 3. EFFECTIVE DATE. This Act becomes effective January 1, 2004, and applies to all applications for certificate renewal beginning with the 2004 certificate year.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 374

SENATE BILL NO. 2131

(Agriculture Committee)

(At the request of the Board of Registration for Professional Soil Classifiers)

SOIL CLASSIFIER APPLICATIONS AND FEES

AN ACT to amend and reenact sections 43-36-14, 43-36-15, and 43-36-16 of the North Dakota Century Code, relating to soil classifier application and registration fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-36-14 of the North Dakota Century Code is amended and reenacted as follows:

43-36-14. Application for registration. Application for registration as a professional soil classifier and for certification as a soil classifier-in-training must be on a form prescribed and furnished by the board, must contain statements made under oath showing the applicant's education, a detailed summary of the applicant's experience, and references as required by this chapter and must be accompanied by an application fee established by the board of not less than ~~five~~ fifty nor more than ~~twenty-five~~ two hundred dollars. If the national test is administered, the amount may not exceed five hundred dollars.

SECTION 2. AMENDMENT. Section 43-36-15 of the North Dakota Century Code is amended and reenacted as follows:

43-36-15. Registration fees.

1. The board shall establish registration fees provided:
 - a. The registration fee for in-state professional soil classifiers must be at least ~~twenty~~ fifty dollars but not more than ~~one~~ three hundred dollars.
 - b. The registration fee for in-state soil classifier-in-training certification or enrollment must be at least ~~ten~~ twenty-five dollars but not more than ~~fifty~~ one hundred dollars.
 - c. The registration fee for out-of-state professional soil classifiers must be at least ~~fifty~~ one hundred dollars but not more than ~~one~~ three hundred dollars.
2. If the board denies the issuance of a certificate to an applicant, the board shall retain the application fee.

SECTION 3. AMENDMENT. Section 43-36-16 of the North Dakota Century Code is amended and reenacted as follows:

43-36-16. Examinations. Examinations must be held at such times and places as the board determines. Examinations required on fundamental soil subjects may be taken at any time prescribed by the board. The final examinations may not be taken until the applicant has completed a period of soil classifying experience as provided in this chapter. The passing grade on any examination may not be less than seventy percent. A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board of not less than ~~ten~~ twenty-five nor more than ~~twenty-five~~ fifty dollars. Any candidate for registration having an average grade of less than fifty percent may not apply for reexamination for a period of one year from the date of such examination.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 375**SENATE BILL NO. 2142**

(Human Services Committee)

(At the request of the State Board of Occupational Therapy Practice)

OCCUPATIONAL THERAPIST LICENSING

AN ACT to amend and reenact subsection 1 of section 43-40-15 of the North Dakota Century Code, relating to the licensure of occupational therapists and occupational therapy assistants; and to repeal section 43-40-17 of the North Dakota Century Code, relating to consultations and evaluations performed by occupational therapists.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-40-15 of the North Dakota Century Code is amended and reenacted as follows:

1. Any license issued under this chapter is subject to ~~annual~~ biennial renewal and expires unless renewed in the manner prescribed by the rules of the board. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but ~~no~~ late renewal of a license may not be granted more than three years after its expiration.

SECTION 2. REPEAL. Section 43-40-17 of the North Dakota Century Code is repealed.

Approved March 14, 2003

Filed March 17, 2003

CHAPTER 376

SENATE BILL NO. 2156

(Human Services Committee)

(At the request of the North Dakota Board of Social Work Examiners)

SOCIAL WORKER LICENSING

AN ACT to amend and reenact section 43-41-01, subsections 2, 4, and 5 of section 43-41-02, subsection 1 of section 43-41-03, sections 43-41-04, 43-41-04.1, 43-41-05, and 43-41-07, subsections 1, 2, and 5 of section 43-41-08, and sections 43-41-09, 43-41-11, and 43-41-12 of the North Dakota Century Code, relating to the licensure of social workers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-41-01 of the North Dakota Century Code is amended and reenacted as follows:

43-41-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Board" means the North Dakota board of social work examiners.
2. "College or university" means an institution of higher education whose social work program has been accredited by an accrediting body approved by the board.
3. "Licensed certified social worker" means an individual who has a doctorate or master's degree in social work from a college or university accredited by the council on social work education and who has fulfilled the requirements for licensure.
3. ~~4.~~ "Licensed independent clinical social worker" means an individual who has a doctorate or master's degree in social work from a college or university accredited by the council on social work education and who has fulfilled the requirements for licensure or has been registered by the board for third-party reimbursement before August 1, 1997.
4. ~~5.~~ "Licensed social worker" means an individual who has a baccalaureate degree in social work from a college or university accredited by the council on social work education and who has fulfilled the requirements for licensure.
5. ~~6.~~ "Private practice of social work" means the independent practice of social work 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 an agency are not considered to be the private practice of social work.
6. ~~7.~~ Social work practice consists of the professional application of social work values, principles, and techniques in: helping people obtain tangible services; counseling; psychotherapy with individuals, families, and groups; helping communities or groups to improve social and health

services; providing social casework; directly supervising programs providing social work services; social work education; social work research; or any combination of these. The practice of social work requires knowledge of human development and behavior, of social, economic, and cultural institutions, and of the interaction of all of these factors.

SECTION 2. AMENDMENT. Subsections 2, 4, and 5 of section 43-41-02 of the North Dakota Century Code are amended and reenacted as follows:

2. Nothing in this chapter may be construed to prevent students who are enrolled in programs of study leading to social work degrees from interning with a licensed social worker ~~or~~, a licensed certified social worker, or a licensed independent clinical social worker.
4. Nothing in this chapter prevents the employment of social work designees by hospitals, ~~intermediate~~ basic care facilities, or skilled nursing homes facilities, provided these persons work under the direction of a social worker or social work consultant licensed under this chapter.
5. This chapter does not require public or appointed officials or administrators, acting in that capacity, or any other social or human service administrators who do not hold themselves out to the public as social workers, by title or description of services, to be licensed ~~or certified~~ under this chapter. ~~However, any individual may be licensed if otherwise qualified under this chapter.~~

SECTION 3. AMENDMENT. Subsection 1 of section 43-41-03 of the North Dakota Century Code is amended and reenacted as follows:

1. Only those persons licensed to practice under this chapter may ~~use the title " represent themselves as a licensed social worker" and the initials "l.s.w." after the person's name, or the title "~~ licensed certified social worker" ~~and the initials "l.c.s.w." after the person's name,~~ or licensed independent clinical social worker.

SECTION 4. AMENDMENT. Section 43-41-04 of the North Dakota Century Code is amended and reenacted as follows:

43-41-04. Licenses.

1. Except as otherwise provided in this chapter, no person may engage in social work practice in this state unless that person is a licensed social worker ~~or~~, a licensed certified social worker, or a licensed independent clinical social worker.
2. The board shall issue a license as a licensed social worker to an applicant who:
 - a. Has a baccalaureate degree in a social work ~~or social welfare program approved by the board~~ from a college or university ~~accredited by the council on social work education.~~
 - b. Has passed an examination approved by the board for this purpose.

- c. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.
3. The board shall issue a license as a licensed certified social worker to an applicant who:
 - a. Has a doctorate or master's degree in social work from a ~~school of social work accredited by the council on social work education~~ college or university.
 - b. Has passed an examination approved by the board for this purpose.
 - c. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.
 4. The board shall issue a license as a licensed independent clinical social worker to an applicant who:
 - a. Has a doctorate or master's degree in social work from a ~~school of social work accredited by the council on social work education~~ college or university.
 - b. Has passed an examination approved by the board for this purpose.
 - c. Has satisfied the board that the applicant has successfully completed within four years, three thousand hours of ~~full-time~~ post-master's clinical social work experience under the supervision of a licensed certified social worker who has two years of experience, a licensed independent clinical social worker, a licensed clinical psychologist with a doctorate degree, or a licensed psychiatrist. ~~This requirement must be waived if the applicant was approved by the board for third-party reimbursement or certified for private practice before August 1, 1997.~~
 - d. Has satisfied the board that the applicant agrees to adhere to the code of social work ethics adopted by the board.

SECTION 5. AMENDMENT. Section 43-41-04.1 of the North Dakota Century Code is amended and reenacted as follows:

43-41-04.1. Fees. The board shall set by rule all the following fees ~~authorized by this chapter. The fees may not exceed the following amounts:~~

- | | |
|--------------------------------------|----------|
| 1. Application fee_ | \$50.00 |
| 2. License fee_ | \$150.00 |
| 3. Renewal fee_ | \$100.00 |
| 4. Late fee_ | \$300.00 |
| 5. <u>Administrative fees.</u> | |
| 6. <u>Continuing education fees.</u> | |

SECTION 6. AMENDMENT. Section 43-41-05 of the North Dakota Century Code is amended and reenacted as follows:

43-41-05. Private practice of social work. A person may not engage in the private practice of social work unless that person has been licensed by the board as a licensed independent clinical social worker ~~or was certified to practice privately by the board before August 1, 1997.~~

SECTION 7. AMENDMENT. Section 43-41-07 of the North Dakota Century Code is amended and reenacted as follows:

43-41-07. Reciprocity Qualification for licensure by an applicant licensed in another jurisdiction. An applicant may be granted ~~reciprocity~~ a license upon satisfactory proof to the board that the applicant is licensed in good standing under the laws of a ~~state or territory of the United States~~ another jurisdiction that imposes substantially the same requirements as this chapter. ~~Failure to provide satisfactory proof will require taking and passing the examination required by this chapter.~~

SECTION 8. AMENDMENT. Subsections 1, 2, and 5 of section 43-41-08 of the North Dakota Century Code are amended and reenacted as follows:

1. The governor shall appoint the North Dakota board of social work examiners which must consist of six members, two of whom must be licensed social workers, ~~two~~ one of whom must be a licensed certified social worker, ~~one of whom must be a licensed independent clinical social worker~~, and two of whom must be laypersons. Board members must demonstrate no conflict of interest. ~~The professional members comprising the first appointed board must be persons who are eligible for licensing as social worker and certified social worker.~~
2. The term of office of each board member must be for three years; ~~provided, that of the members first appointed, two must be appointed for a term of one year, two must be appointed for a term of two years, and two must be appointed for a term of three years~~ with two members appointed annually. No member may serve more than two consecutive terms.
5. Board members shall, ~~at the first regular meeting after July 1, 1983, and annually thereafter,~~ annually elect by a majority vote of the board, a chairperson who shall preside at meetings of the board and a vice chairperson who shall preside at meetings of the board in the chairperson's absence. A majority of the members of the board constitutes a quorum.

SECTION 9. AMENDMENT. Section 43-41-09 of the North Dakota Century Code is amended and reenacted as follows:

43-41-09. Duties and responsibilities of board. In addition to the duties set forth elsewhere in this chapter, the board shall:

1. Adopt rules ~~and regulations~~ to administer and carry out the provisions of this chapter.

2. ~~Publish~~ Produce an annual list of the names and ~~addresses~~ level of licensure of all persons licensed under this chapter and make the list available upon request.
3. ~~Publish an annual list of the names and addresses of persons registered as private practitioners and make the list available upon request.~~
4. At its discretion, ~~appoint a secretary, who need not be a member of the board,~~ employ staff and fix that person's provide for staff compensation.
- ~~5.~~ 4. Approve ~~and administer an examination~~ examinations for licensing social workers.
- ~~6.~~ 5. Establish fees and receive all moneys collected under this chapter.
- ~~7.~~ 6. Deposit and disburse all fees and moneys collected by the board in accordance with section 54-44-12.
- ~~8.~~ 7. Recommend prosecution for violations of this chapter to the appropriate state's attorney.
- ~~9.~~ 8. Recommend ~~that~~ the attorney general bring civil actions to seek injunctive and other relief against violations of this chapter.
- ~~10.~~ 9. Establish continuing education requirements for license renewal.
- ~~11.~~ 10. Adopt a code of social work ethics.
- ~~12.~~ Publish an annual report of board activities.
- ~~13.~~ Issue provisional or probationary licenses.

SECTION 10. AMENDMENT. Section 43-41-11 of the North Dakota Century Code is amended and reenacted as follows:

43-41-11. Hearings and disciplinary proceedings - Appeals.

1. Upon the filing of a written and signed complaint that alleges that a licensee practicing in this state has engaged in conduct identified as grounds for disciplinary action under section 43-41-10, and which sets forth information upon which a reasonable and prudent person might believe that further inquiry should be made, the board shall cause the matter to be investigated.
2. The board may investigate a complaint on its own motion, without requiring the identity of the complainant to be made a matter of public record, if the board concludes that good cause exists for preserving the anonymity of the complainant.
3. If the investigation reveals grounds to support the complaint, the board shall initiate a disciplinary action by serving upon the licensee, ~~by certified mail,~~ a notice of disciplinary action setting forth the allegations upon which the action is based, as well as a specification of the issues to be considered and determined.

4. If a written response contesting the allegations is not received by the board within twenty days of the date that the notice of disciplinary action was received or refused, the allegations must be deemed admitted and disciplinary sanctions deemed appropriate by the board must be imposed.
5. ~~Following the initiation of a disciplinary action, as provided in subsection 3, the board may direct the chairman to select a panel of three board members and offer the licensee the opportunity to meet informally with that panel for the purpose of determining whether the disciplinary action, including appropriate sanctions, can be resolved by mutual agreement. Any agreement reached between the panel and the licensee must be ratified by a majority of the board. The board may at any time enter into an informal resolution to resolve the complaint or disciplinary action.~~
6. ~~If an informal agreement cannot be reached, or is not ratified, or the board elects not to offer the licensee the opportunity for informal resolution, the licensee is entitled to a hearing under chapter 28-32. For purposes of the hearing, the provisions of section 28-32-21 apply only to the licensee.~~
7. An appeal from the board's final decision may be taken in accordance with the provisions of section 28-32-42.

SECTION 11. AMENDMENT. Section 43-41-12 of the North Dakota Century Code is amended and reenacted as follows:

43-41-12. Renewal of licenses.

1. All licenses are effective when ~~issued~~ granted by the board.
2. All licenses of licensed social workers ~~and~~ licensed certified social workers, and licensed independent clinical social workers expire on ~~December 31, 1985, and on December thirty-first of every two years thereafter~~ odd-numbered year.
3. A license may be renewed by payment of the renewal fee ~~set by the board~~ and completion of the continuing education requirements set by the board, provided the applicant's license is not currently revoked or ~~suspended~~ grounds for denial under section 43-41-10 do not exist.
4. If the application for renewal is not received on or before the expiration date, the license expires and the person may not practice social work until ~~the~~ a new application is made and a license is renewed granted by the board.
5. 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.
6. If a license has not been renewed as a result of nonpayment of the renewal fee or the failure of the licensee to present satisfactory ~~proof~~ evidence of completion of the continuing education requirements, the ~~applicant may renew the license within six months after the expiration of the previous license upon payment to the board of the amount of the renewal fee and by presenting satisfactory proof that the continuing~~

education requirements have been met. The board may also charge a late fee. If a license is not renewed within six months after the expiration of the license, a new application for licensure must be made licensee must reapply for licensure.

7. 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.

Approved March 21, 2003

Filed March 21, 2003

CHAPTER 377**SENATE BILL NO. 2218**
(Senator Andrist)**ENVIRONMENTAL HEALTH SPECIALTY LICENSES**

AN ACT to amend and reenact section 43-43-04 of the North Dakota Century Code, relating to the creation of limited or specialty practice licenses within the practice of environmental health.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-43-04 of the North Dakota Century Code is amended and reenacted as follows:

43-43-04. Powers and duties of state health officer. The state health officer shall adopt rules consistent with and necessary for the implementation and enforcement of this chapter, including rules concerning the:

1. Qualifications and requirements for licensure under this chapter.
2. Application for licensure and renewal of license.
3. Licensure.
4. Fees that may not exceed fifty dollars for licensure fees.
5. Scope of practice.
6. Ethical standards of conduct.
7. Continuing competency and education requirements.
8. Grievances and complaints.
9. Reimbursement of advisory board expenses.
10. Emergency exemptions as to requirements for licensure under this chapter.
11. Qualifications and requirements for specialty licenses or credentials within the scope of practice of an environmental health practitioner, including specialty licenses or credentials for limited practice areas.

Approved March 19, 2003
Filed March 19, 2003

CHAPTER 378

SENATE BILL NO. 2143

(Human Services Committee)

(At the request of the Board of Addiction Counseling Examiners)

ADDICTION COUNSELOR LICENSING

AN ACT to amend and reenact subsection 1 of section 43-45-05.1 and section 43-45-07.1 of the North Dakota Century Code, relating to the licensure of addiction counselors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 43-45-05.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall issue an initial one-year license as an addiction counselor to an applicant who:
 - a. Has successfully completed coursework, approved by the board, at an accredited college or university;
 - b. Has successfully completed an examination one or more oral or written examinations approved by the board for this purpose;
 - c. Has successfully completed an addiction counselor training program approved by the board, a practicum, and a work experience or internship; and
 - d. Has satisfied the board that the applicant agrees to adhere to the code of professional conduct adopted by the board.

SECTION 2. AMENDMENT. Section 43-45-07.1 of the North Dakota Century Code is amended and reenacted as follows:

43-45-07.1. Grounds for disciplinary proceedings. The board may deny an application, refuse to renew, suspend, revoke, or place on probationary status any license issued under this chapter on proof at a hearing that the applicant or holder of the license has engaged in unprofessional conduct. Unprofessional conduct includes:

1. Obtaining an initial license or renewal by means of fraud, misrepresentation, or concealment of material facts.
2. Violating rules set by the board.
3. Violating a provision of this chapter.
4. Violating the professional code of conduct as adopted by the board.
5. Being adjudged guilty of an offense determined by the board to have a direct bearing on an applicant's or holder of the license's ability to serve the public as an addiction counselor or being adjudged guilty of any

offense and being insufficiently rehabilitated as determined by the board under section 12.1-33-02.1.

One year from the date of the revocation, the license holder may make application for initial licensure.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 379**HOUSE BILL NO. 1336**

(Representatives Maragos, D. Johnson, Nicholas)
(Senator Traynor)

DEAF AND HARD OF HEARING INTERPRETING

AN ACT to create and enact two new subsections to section 43-52-03 of the North Dakota Century Code, relating to exceptions to requirements for the practice of interpreting for the deaf and hard of hearing.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 43-52-03 of the North Dakota Century Code are created and enacted as follows:

An individual working in an elementary or secondary school who has successfully completed a three-year educational interpreter certificate program of study or who has passed the educational interpreter performance assessment at a level of 3.5 or higher. The individual may work in the school setting without national certification until August 1, 2005, if the individual is being mentored by a trained mentor who is either a certified interpreter or a deaf adult. To continue working in the school setting after August 1, 2005, the individual must have obtained national certification.

An individual who has successfully completed an accredited interpreter training program from interpreting without certification for a period of up to two years from the date of completion of the program if, during that period, the individual is mentored by a trained mentor who is either a certified interpreter or a deaf adult.

Approved March 27, 2003
Filed March 28, 2003

OFFICES AND OFFICERS

CHAPTER 380

SENATE BILL NO. 2185

(Senators Wardner, Schobinger)
(Representatives F. Klein, Nottestad)

BONDS OF PUBLIC OFFICERS

AN ACT to repeal sections 44-01-08, 44-01-09, and 44-01-10 of the North Dakota Century Code, relating to bonds of public officers other than those furnished by the state bonding fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 44-01-08, 44-01-09, and 44-01-10 of the North Dakota Century Code are repealed.

Approved March 21, 2003

Filed March 24, 2003

CHAPTER 381

HOUSE BILL NO. 1078

(Industry, Business and Labor Committee)

(At the request of the Superintendent of Public Instruction)

LICENSING INFORMATION CONFIDENTIALITY

AN ACT to amend and reenact section 44-04-18.1 of the North Dakota Century Code, relating to the confidentiality of personal information obtained by a state agency in administering occupational or professional licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁷⁹ **SECTION 1. AMENDMENT.** Section 44-04-18.1 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.1. Public employee personal, medical, and employee assistance records - Confidentiality - Personal information maintained by professional boards state entities.

1. Any record of a public employee's medical treatment or use of an employee assistance program is not to become part of that employee's personnel record and is confidential and may not be released without the written consent of the employee. As used in this section, the term "public employee" includes any individual who has applied for employment, is employed, or has been employed by a public entity.
2. Except as otherwise specifically provided by law, personal information regarding a public employee contained in an employee's personnel record or given to the state or a political subdivision by the employee in the course of employment is exempt. As used in this section, "personal information" means a person's home address; home telephone number; photograph; medical information; motor vehicle operator's identification number; social security number; payroll deduction information; the name, address, telephone number, date of birth, and social security number of any dependent or emergency contact; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution.
3. Nonconfidential information contained in a personnel record of an employee of a public entity as defined in subdivision c of subsection 12 of section 44-04-17.1 is exempt.

¹⁷⁹ Section 44-04-18.1 was also amended by section 8 of House Bill No. 1092, chapter 382, and section 24 of House Bill No. 1438, chapter 211.

4. Except as otherwise specifically provided by law, personal information regarding a licensee maintained by an occupational or professional board, association, state agency or commission created by law is exempt. As used in this section, "licensee" means an individual who has applied for, holds, or has held in the past an occupational or professional license, certificate, credential, permit, or registration issued by a state occupational or professional board, association, agency, or commission.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 382

HOUSE BILL NO. 1092

(Industry, Business and Labor Committee)
(At the request of the Attorney General)

SOCIAL SECURITY NUMBER CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 11-18, a new subsection to section 23-02.1-28, and three new sections to chapter 44-04 of the North Dakota Century Code, relating to redaction of social security numbers by the county recorder, the confidentiality of social security numbers, the confidentiality of client files at the University of North Dakota school of law, and the confidentiality of records of fire department and rural fire protection districts; to amend and reenact section 20.1-03-35, subsection 8 of section 23-02.1-19, section 23-02.1-27, subsection 6 of section 41-09-73, section 43-50-04, subsection 2 of section 44-04-18.1, subsection 6 of section 44-04-20, and subsection 1 of section 44-04-21.1 of the North Dakota Century Code, relating to confidentiality of social security numbers, notice of emergency or special meetings, and release of certain information received by the attorney general when preparing open records and meetings opinions; to provide for application; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-18 of the North Dakota Century Code is created and enacted as follows:

Filing or recording documents with recorder - Social security numbers.

1. A document that includes a social security number may not be filed or recorded with the recorder unless a law requires the social security number to be in the document in order to be filed or recorded. A document that is required to contain a social security number may be recorded in the real estate records with the social security number redacted.
2. Notwithstanding any other provision of law, when a copy of a document that includes a social security number is requested, the recorder is not required to redact the social security number unless the document was filed or recorded with the recorder after the effective date of this Act.
3. A document that must include a social security number under chapters 14-03 and 23-02.1 may be processed and recorded under those chapters; however, the social security number is confidential and must be redacted before a copy or certified copy may be provided to the public.

SECTION 2. 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 ~~exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota~~ confidential.

¹⁸⁰ **SECTION 3. AMENDMENT.** Subsection 8 of section 23-02.1-19 of the North Dakota Century Code is amended and reenacted as follows:

8. Each death certificate must include the social security number of the decedent, if the information is available. A social security number included on a death certificate is ~~exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota~~ confidential.

SECTION 4. 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. The state registrar, and local registrars, may supervise and regulate physical access to vital records to protect vital records from loss, mutilation, or destruction and to prevent improper disclosure of 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 ~~person~~ individual to whom the record relates if that ~~person~~ 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.

SECTION 5. A new subsection to section 23-02.1-28 of the North Dakota Century Code is created and enacted as follows:

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, or by order of a court.

¹⁸¹ **SECTION 6. AMENDMENT.** Subsection 6 of section 41-09-73 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~Effective January 1, 2002, any~~ Any social security number or federal tax identification number submitted under subdivision e of subsection 1 is not a public record and may not be disclosed as part of any search under section 41-09-94 or 41-09-96 or as part of a copy of the record. A debtor's social security number or federal tax identification number may

¹⁸⁰ Section 23-02.1-19 was also amended by section 1 of House Bill No. 1481, chapter 209.

¹⁸¹ Section 41-09-73 was also amended by section 1 of House Bill No. 1185, chapter 354.

be filed only in the filing office with the central indexing system and may not be recorded in the real property records.

SECTION 7. AMENDMENT. Section 43-50-04 of the North Dakota Century Code is amended and reenacted as follows:

43-50-04. Social security number ~~not public record~~ - Confidential. A social security number provided under this chapter is ~~exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota~~ confidential.

¹⁸² **SECTION 8. AMENDMENT.** Subsection 2 of section 44-04-18.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as otherwise specifically provided by law, personal information regarding a public employee contained in an employee's personnel record or given to the state or a political subdivision by the employee in the course of employment is exempt. As used in this section, "personal information" means a person's home address; home telephone number; photograph; medical information; motor vehicle operator's identification number; ~~social security number~~; payroll deduction information; the name, address, telephone number, and date of birth; ~~and social security number of any dependent or emergency contact~~; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution.

SECTION 9. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Social security numbers - Confidential.

1. Social security numbers in the possession of a public entity are confidential. However, social security numbers may be released as authorized in this section or by other state or federal law.
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.

SECTION 10. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Client files at the university of North Dakota school of law - Confidential. Information in the files of private clients receiving legal services through the clinical education program of the university of North Dakota school of law is confidential

¹⁸² Section 44-04-18.1 was also amended by section 1 of House Bill No. 1078, chapter 381, and section 24 of House Bill No. 1438, chapter 211.

unless the information has been requested and is properly obtainable through applicable discovery rules.

SECTION 11. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Records of fire departments and rural fire protection districts confidential.

1. a. An investigation record of a fire department or a rural fire protection district is confidential until the investigation:
 - (1) Is closed and not referred for further criminal investigation or prosecution; or
 - (2) The criminal investigation is no longer active under section 44-04-18.7.
- b. This subsection does not restrict the release of the name and identifiable biographical information of a child under section 12.1-35-03.
2. Standard operating procedures written for emergency response, prefire action plans, plans of a building, pipeline, electrical system, or any other infrastructure plan in the hands of a fire department or rural fire protection district are exempt from section 44-04-18.
3. Individually identifiable health information obtained by a fire department or rural fire protection district is confidential.

SECTION 12. AMENDMENT. Subsection 6 of section 44-04-20 of the North Dakota Century Code is amended and reenacted as follows:

6. In the event of emergency or special meetings of a governing body, the person calling such a meeting shall also notify the public entity's official newspaper, if any, and any representatives of the news media which have requested to be so notified of such special or emergency meetings, of the time, place, date, and topics to be considered at the same time as such governing body's members are notified. Topics that may be considered at an emergency or special meeting are limited to those included in the notice ~~to the media~~.

SECTION 13. AMENDMENT. Subsection 1 of section 44-04-21.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Any interested person may request an attorney general's opinion to review a written denial of a request for records under section 44-04-18, a denial of access to a meeting under section 44-04-19, or other alleged violation of section 44-04-18, 44-04-19, 44-04-19.2, 44-04-20, or 44-04-21 by any public entity other than the legislative assembly or any committee thereof. A request made under this section must be made within thirty days of the alleged violation. In preparing an opinion under this section, the attorney general has discretion to obtain and review a recording made under section 44-04-19.2. The attorney general may request and obtain information claimed to be exempt or confidential for the purpose of determining whether the information is exempt or

confidential. Any such information may not be released by the attorney general and may be returned to the provider of the information. The attorney general shall issue to the public entity involved an opinion on the alleged violation unless the request is withdrawn by the person requesting the opinion or a civil action has been filed involving the possible violation. If the request pertains to a public entity as defined in subdivision c of subsection 12 of section 44-04-17.1, the opinion must be issued to the public entity providing the public funds. In any opinion issued under this section, the attorney general shall base the opinion on the facts given by the public entity.

SECTION 14. APPLICATION - NOTICE TO PUBLIC. Section 9 of this Act does not apply to recorders until December 1, 2003. From the effective date of this Act until November 30, 2003, each recorder shall provide written notice of the relevant terms of this Act to any individual filing or recording a document if the document contains a social security or federal tax identification number. The notice must also state that a document containing a social security and federal tax identification number may not be filed or recorded after November 30, 2003.

SECTION 15. EFFECTIVE DATE. Sections 1 and 6 of this Act become effective on December 1, 2003.

SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 21, 2003

Filed April 21, 2003

CHAPTER 383

HOUSE BILL NO. 1213

(Representatives Delmore, Maragos, Onstad)
(Senators Lyson, Nelson, Trenbeath)

JUVENILE COURT OFFICER RECORDS CONFIDENTIALITY

AN ACT to amend and reenact section 44-04-18.3 of the North Dakota Century Code, relating to the confidentiality of records containing the telephone number and home address of juvenile court supervisors and probation officers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18.3 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.3. Records of juvenile court supervisors and probation officers and law enforcement and correctional employees - Confidential informants.

1. Any telephone number and the home address of a juvenile court supervisor or probation officer, an employee of a law enforcement agency, employee of a state or local correctional facility, and an employee of the department of corrections and rehabilitation are confidential. A record containing information relating to an employee of the department of corrections and rehabilitation may be disclosed to an appropriate authority under policy established by the department of corrections and rehabilitation.
2. Records or other information that would reveal the identity, or endanger the life or physical well-being, of an undercover law enforcement officer is confidential. For purposes of this subsection, an "undercover law enforcement officer" means a full-time, salaried employee of a local or state law enforcement agency who acts surreptitiously or poses as someone other than a law enforcement officer while engaging in the investigation of a violation of law.
3. A law enforcement officer or prosecutor, within the scope of the employment of the officer or prosecutor, may provide assurances of confidentiality to a person providing information regarding violations of the law. Any information that would identify or provide a means of identifying a confidential informant, if the identity of the informant is not otherwise publicly known, is confidential and may be disclosed only as permitted by law.

Approved April 7, 2003
Filed April 7, 2003

CHAPTER 384

HOUSE BILL NO. 1320

(Representatives Koppelman, Boehning, DeKrey)
(Senators Bercier, Nelson, Traynor)

AUTOPSY INFORMATION CONFIDENTIALITY

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to the privacy of autopsy photographs, images, and recordings.

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:

Autopsy images - Confidential - Exceptions.

1. An autopsy photograph or other visual image or a video or audio recording of an autopsy is confidential. However, a criminal justice agency may use or disclose these materials for purposes of an investigation or prosecution.
2. a. After redacting all information identifying the decedent, including name, address, and social security number, and anonymizing facial recognition, a medical examiner, coroner, or physician may use an autopsy photograph, image, or recording for:
 - (1) Medical or scientific teaching or training purposes;
 - (2) Teaching or training of law enforcement personnel;
 - (3) Teaching or training of attorneys or others with a bona fide professional need to use or understand forensic science;
 - (4) Conferring with medical or scientific experts; or
 - (5) Publication in a scientific or medical journal or textbook.
- b. A medical examiner, coroner, or physician who has in good faith complied with this subsection is not subject to any penalty or liability for using an autopsy photograph, image, or recording.
3. The decedent's spouse, child, parent, or sibling, upon proof of the relationship, may view an autopsy photograph, image, or recording in the business office of a medical examiner, coroner, or physician who has possession of the materials, if there is not an active criminal investigation or prosecution.

4. Disclosure of an autopsy photograph, image, or recording may be obtained under section 44-04-18.11.

Approved April 9, 2003

Filed April 9, 2003

CHAPTER 385

HOUSE BILL NO. 1143

(Judiciary Committee)

(At the request of the Division of Emergency Management)

PUBLIC HEALTH AND SECURITY PLAN CONFIDENTIALITY

AN ACT to create and enact three new sections to chapter 44-04 of the North Dakota Century Code, relating to confidentiality of public health and security system plans; and to declare an emergency.

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:

Security system plan - Exemption.

1. A security system plan kept by a public entity is exempt from the provisions of section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.
2. As used in this section:
 - a. "Critical infrastructure" means public buildings, systems, including telecommunications centers and computers, power generation plants, dams, bridges, and similar key resources, whether physical or virtual, so vital to the state that the incapacity or destruction of these systems would have a debilitating impact on security, state economic security, state public health or safety, or any combination of those matters.
 - b. "Security system plan" includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, communications, or consultations or portions of any such plan relating directly to the physical or electronic security of a public facility, or any critical infrastructure, whether owned by or leased to the state or any of its political subdivisions, or any privately owned or leased critical infrastructure if the plan or a portion of the plan is in the possession of a public entity; threat assessments; vulnerability and capability assessments conducted by a public entity, or any private entity; threat response plans; and emergency evacuation plans.
3. This exemption applies to security system plans received by a public entity before, on, or after the effective date of this Act.
4. Nothing in this section may be construed to limit disclosure required for necessary construction, renovation, or remodeling work on a public building. Disclosure under this subsection does not constitute public disclosure.

SECTION 2. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Public health and security plans - Exemption. Any plans and only those portions of the records, information, surveys, communications, and consultations used to produce the plans relating to protection of the public or public officials against threats of violence or other harm are exempt from the provisions of section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

SECTION 3. A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Security system plan - Public health and security plans - Exemption from public meeting requirements. Those portions of a meeting which would reveal a security system plan, a public health or security plan, or a portion of any such plan, made exempt by section 1 or 2 of this Act, are exempt from section 44-04-19 and section 5 of article XI of the Constitution of North Dakota.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 20, 2003
Filed March 20, 2003

CHAPTER 386**SENATE BILL NO. 2038**
(Legislative Council)
(Information Technology Committee)**COMPUTER SECURITY INFORMATION
CONFIDENTIAL**

AN ACT to create and enact a new section to chapter 44-04 of the North Dakota Century Code, relating to the confidentiality of records containing computer passwords and security information; and to declare an emergency.

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:

Computer passwords and security information - Confidential. Security codes, passwords, combinations, or security-related plans used to protect electronic information or to prevent access to computers, computer systems, or computer or telecommunications networks of a public entity are confidential.

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

Approved March 19, 2003
Filed March 19, 2003

CHAPTER 387

HOUSE BILL NO. 1168

(Judiciary Committee)

(At the request of the Secretary of State)

NOTARY PUBLIC SEALS AND FEES

AN ACT to amend and reenact sections 44-06-04, 44-06-12, 44-06-13.1, 44-06-14, and 44-08-06 of the North Dakota Century Code, relating to notaries public and their seals and fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-06-04 of the North Dakota Century Code is amended and reenacted as follows:

44-06-04. Filing of oath, bond, and impression of notarial seal - Requirements of seal. Each notary public, before entering upon the duties of office, shall file the notary public's oath and bond, in the office of the secretary of state. The secretary of state, upon receipt of the proper fee, oath, and bond, shall issue a certificate of authorization with which the notary public may obtain an official notary seal. A notary seal vendor may provide a notary with an official seal only upon presentation by the notary of a certificate of authorization. The notary public shall place an impression of the notary's seal on the certificate of authorization and return the certificate of authorization to the secretary of state. After the certificate of authorization is received, approved, and filed, the secretary of state shall issue a notary commission that authorizes the notary to commence the duties of the office of notary public.

~~An official notary seal may not contain~~ After the effective date of this Act, a notary being commissioned must obtain a seal approved by the secretary of state which must be designed to leave a clear impression, be photographically reproducible, include the words "State of North Dakota" and "Notary Public", contain the name and commission expiration date of the notary public exactly as shown on the notary's commission, and which may not contain any other words, numbers, symbols, or a reproduction of the great seal of the state. All notary seals must be surrounded by a border and be either one and five-eighths inch [41.28 millimeters] in diameter or if of a rectangular design, may be up to or equal to seven-eighths inch [22.23 millimeters] vertically by two and five-eighths inches [66.68 millimeters] horizontally. An official seal is the property of the notary only and may not be retained or used by any other person including an employer of a notary even if the employer purchased or paid for the notary's seal. An official seal must remain in the direct and exclusive control of the notary at all times during a notary's commission. A notary must affix the notary's seal to each jurat or certificate of acknowledgment at the time of performing the notarial act. Upon the resignation, removal, revocation, or expiration of a notary's commission, or the death or name change of a notary, the notarial seal must be destroyed. When a notary's official seal is lost, damaged, or is rendered otherwise unworkable, the notary shall immediately submit written notice of that fact to the secretary of state. Within five working days after receipt of the notice, the secretary of state shall issue a new certificate of authorization which a notary may use to obtain a replacement seal.

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. Every notary public taking an acknowledgment to any instrument, immediately following the notary's signature to the jurat or certificates of acknowledgment, shall legibly print, stamp, or type the notary's name and endorse 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 ~~may~~ must be ~~written legibly,~~ stamped, or printed upon the instrument ~~either connected to or disconnected from the seal~~ and must be substantially in the following form:

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. A notary public may not notarize a signature on a document if:

1. 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. The name of the notary public or the spouse of the notary public appears on the document as a party to the transaction.
3. The signature is that of the notary public or the spouse of the notary public.
4. 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. 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. The signature on the document or the notarial certificate is not an original signature, except as otherwise provided by law.
7. The notary is falsely or fraudulently signing or notarizing a document, jurat, or certificate of acknowledgement or in any other way is impersonating or assuming the identity of another notary.

A notary public who violates this section is guilty of an infraction and the notary public's commission ~~must~~ 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. AMENDMENT. Section 44-06-14 of the North Dakota Century Code is amended and reenacted as follows:

44-06-14. Fees to be charged for notarial acts - Penalty. A notary public is entitled to charge and receive not more than five dollars per notarial act. A notary who charges a fee exceeding that amount is guilty of an infraction. It is an infraction for any person other than the notary public to impose or collect any monetary fee, charge, or commission in connection with the notarization of any document. A notary may charge a travel fee when traveling to perform a notarial act if:

1. The notary and the person requesting the notarial act agree upon the travel fee in advance of the travel; and
2. The notary explains to the person requesting the notarial act that the travel fee is both separate from the notarial fee and neither specified nor mandated by law.

SECTION 5. AMENDMENT. Section 44-08-06 of the North Dakota Century Code is amended and reenacted as follows:

44-08-06. Dimensions of seal of court or officer. ~~Upon~~ Except as otherwise provided in section 44-06-04 relating to notary seals, upon every seal of a court or officer of this state required or authorized to have a seal, there must be engraved the words "State of North Dakota" and the name of the court or office in which the seal is to be used. All such seals, except the great seal, must be surrounded by a border, and be either one and five-eighths inch [41.28 millimeters] in diameter or if of a rectangular design, may be up to or equal to seven-eighths inch [22.23 millimeters] vertically by two and five-eighths inches [66.68 millimeters] horizontally.

Approved March 31, 2003
Filed March 31, 2003

CHAPTER 388

SENATE BILL NO. 2078

(Government and Veterans Affairs Committee)

(At the request of the Office of Management and Budget)

STATE EMPLOYEE TRAVEL AND LODGING EXPENSES

AN ACT to amend and reenact subsection 1 of section 44-08-04.2 and sections 44-08-04.5, 44-08-05.1, and 54-06-06 of the North Dakota Century Code, relating to travel advances, direct payment of lodging expenses, payment approval requirements, and periodic salary payments for state employees; and to repeal sections 44-08-08 and 54-06-16 of the North Dakota Century Code, relating to per diem oath and penalty and minimum wage for state employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 44-08-04.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Any state agency shall advance at the request of the agency head for employees of that agency funds to be used for payment of meal and lodging expenses incurred while the official or employee is traveling on official business of this state, provided that such travel must be planned to be in excess of five days per month, whether or not consecutive, and provided that the funds advanced do not exceed eighty percent of estimated expenses for the period. Travel advance warrant checks advances must be issued on vouchers signed approved by the chief executive officer or a designee of the agency involved. Funds advanced for meals and lodging under this section must be accounted for as required under section 44-08-04 for travel.

SECTION 2. AMENDMENT. Section 44-08-04.5 of the North Dakota Century Code is amended and reenacted as follows:

44-08-04.5. Prepayment and direct billing of ~~out-of-state~~ lodging expenses of state officers and employees.

1. The office of management and budget shall seek to obtain sales tax exemptions for state employee travel lodging expense from all other states and the District of Columbia. If available from other states, the office of management and budget shall file exemption records, documents, or numbers for use by state agencies. Whenever any state agency, board, bureau, or institution makes out-of-state travel plans involving a lodging expense, the agency may contact the office of management and budget to determine if a sales tax exemption has been obtained from the destination state or states. If an exemption has been obtained, and if travel plans are sufficiently certain, the agency, board, bureau, or institution may obtain the required documentation from the office of management and budget and arrange with the out-of-state lodging provider to have the agency prepay the lodging

expense or to have the lodging expense directly billed to the agency and obtain the benefit of the sales tax exemption.

2. If a state agency, board, bureau, or institution makes ~~out-of-state~~ travel plans involving a lodging expense ~~when the lodging expense may be obtained at a reduced cost because it is part of a combination of travel-related expenses purchased together,~~ the agency, board, bureau, or institution may arrange with the lodging provider or travel agency to have the lodging expense prepaid by the agency or billed directly to the agency.

¹⁸³ **SECTION 3. AMENDMENT.** Section 44-08-05.1 of the North Dakota Century Code is amended and reenacted as follows:

44-08-05.1. Vouchers Payments - Requirements for approval - Penalty - Action for violations. Any public officer or employee who has the power to approve a ~~voucher~~ payment for a department, agency, or institution for travel expenses or any other state expenditure of public funds shall determine before approving ~~such voucher~~ the payment the following:

1. That the expenditure for travel or other expenditures were for lawful and official purposes.
2. If for ~~travel expense~~ 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. If the ~~voucher~~ payment is for expenditure other than travel expense, that the expenditure is lawful and that the ~~voucher~~ payment contains no false claims.

For purchases made with the use of a purchasing card authorized under subsection 8 of section 54-44.4-02, an employee of the office of management and budget designated by the director of the office of management and budget, on behalf of all agencies, may review and approve ~~vouchers~~ payments under this section and make payments pursuant thereto. Any public officer or employee who willfully approves a ~~voucher~~ payment with knowledge it contains false or unlawful claims or that it does not otherwise meet the requirements of this section for approval is guilty of theft and punishable under the provisions of chapter 12.1-23. Any public officer or employee who, without the use of ordinary care and diligence, negligently approves a ~~voucher~~ 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, or any other person who has knowledge of an actual or possible violation of this section shall make such information known to the attorney general. The attorney general shall investigate any alleged violations and, if a violation appears to exist, shall criminally prosecute under chapter 12.1-23 or bring a civil suit for the recovery of such funds as may actually have been improperly paid against the payee and

¹⁸³ Section 44-08-05.1 was also amended by section 1 of House Bill No. 1180, chapter 495.

officer or employee who approved ~~such voucher~~ the payment in violation of any of the above requirements or shall bring both such criminal action and civil suit. The officer or employee who approves any ~~voucher~~ payment negligently has the right of subrogation against the payee of ~~such voucher~~ the payment in the event public funds have been improperly paid to the payee.

SECTION 4. AMENDMENT. Section 54-06-06 of the North Dakota Century Code is amended and reenacted as follows:

54-06-06. Salaries of state officers ~~payable monthly~~ and employees - Periodic payment. Unless otherwise provided by law, the office of management and budget ~~is directed to~~ shall prepare, and state auditor ~~to sign,~~ warrants for the salaries of ~~the various~~ state officers and employees not less frequently than monthly as the same become due.

SECTION 5. REPEAL. Sections 44-08-08 and 54-06-16 of the North Dakota Century Code are repealed.

Approved March 7, 2003
Filed March 7, 2003

PARTNERSHIPS

CHAPTER 389

SENATE BILL NO. 2073

(Senator Krebsbach)

(Representative Dosch)

(At the request of the Secretary of State)

FOREIGN LIMITED PARTNERSHIP REGISTRATION

AN ACT to amend and reenact subsection 8 of section 45-10.1-01 and subsection 1 of section 45-10.1-52 of the North Dakota Century Code, relating to registration of foreign limited partnerships; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁴ **SECTION 1. AMENDMENT.** Subsection 8 of section 45-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Foreign limited partnership" means a partnership formed under ~~the laws of any state~~ other than the laws of this state and having as partners one or more general partners and one or more limited partners.

SECTION 2. AMENDMENT. Subsection 1 of section 45-10.1-52 of the North Dakota Century Code is amended and reenacted as follows:

1. In order to register, a foreign limited partnership shall submit to the secretary of state, on forms prescribed and furnished by the secretary of state, an application for registration as a foreign limited partnership, signed by a general partner and setting forth all of the following:
 - a. The name of the foreign limited partnership and, if different, the name under which the foreign limited partnership proposes to register and transact business in this state.
 - b. The ~~state~~ jurisdiction of origin and date of the foreign limited partnership's formation.
 - c. The general character of the business the foreign limited partnership proposes to transact in this state.
 - d. The name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint and which must be an individual resident of this

¹⁸⁴ Section 45-10.1-01 was also amended by section 118 of House Bill No. 1362, chapter 85.

state, a domestic corporation, a domestic limited liability company, a foreign corporation, or a foreign limited liability company having a place of business in, and authorized to do business in, this state.

- e. A statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if the agent's authority is revoked or if the agent cannot be found or served with the exercise of reasonable diligence.
- f. The address of the principal office of the foreign limited partnership.
- g. The name and address of the principal place of business of each general partner.
- h. The address of the office at which is kept a list of the names and addresses of the limited partners and the limited partners' capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

SECTION 3. RETROACTIVE APPLICATION OF ACT. This Act applies retroactively to any registration on file with the secretary of state on the effective date of this Act.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 13, 2003
Filed March 13, 2003

CHAPTER 390

HOUSE BILL NO. 1498

(Representatives Tieman, Dosch, Ekstrom, Froseth)

(Senators Espegard, Heitkamp)

(Approved by the Delayed Bills Committee)

FICTITIOUS AND TRADE NAME ELECTRONIC FILING

AN ACT to create and enact sections 45-11-02.1, 45-11-10, 47-25-02.1, and 47-25-08 of the North Dakota Century Code, relating to electronic filing of partnership fictitious name certificates and electronic filing of trade name registrations with the secretary of state; and to amend and reenact sections 45-11-04.1, 45-11-08.1, 47-25-03, 47-25-04, and 47-25-06 of the North Dakota Century Code, relating to fictitious name certificates and trade name registrations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 45-11-02.1 of the North Dakota Century Code is created and enacted as follows:

45-11-02.1. Electronic filing of fictitious name certificate. A partnership may file a fictitious name certificate by electronic communication with the secretary of state. The following definitions apply to electronic fictitious name certificate filings with the secretary of state:

1. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
2. "Electronic communication" means any form of communication acceptable to the secretary of state, 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.
3. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
4. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
5. "Legal recognition" means a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. If a provision of this chapter requires:
 - a. A record to be in writing, an electronic record satisfies the requirement.

b. A signature, an electronic signature satisfies the requirement.

6. "Signed" means 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 document, and is communicated by a method or medium of communication acceptable to the secretary of state.

SECTION 2. AMENDMENT. Section 45-11-04.1 of the North Dakota Century Code is amended and reenacted as follows:

45-11-04.1. Renewal. A fictitious name certificate filed under this chapter must be renewed every five years from the date of the initial filing. The statement of renewal must be executed by the partnership on forms prescribed ~~and furnished~~ by the secretary of state which are sent to the address of the principal place of business at least ~~sixty~~ ninety days before the deadline for filing. The statement must include the fictitious name of the partnership, the state or country of organization, the address of the principal place of business, a brief description of the nature of business in which the partnership is engaged in this state, the names and addresses of all general partners, and a statement that the partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the filing fee of twenty-five dollars has been paid, the secretary of state shall file the statement. If the secretary of state finds that it does not so conform, the secretary of state shall promptly return the statement to the partnership for any necessary corrections, in which event, the fictitious name certificate is subject to cancellation if the statement is not returned corrected within thirty days after the statement was returned for corrections. If the statement of renewal reflects a change of membership ~~or change of address of the principal place of business~~, the statement of renewal may not be filed until payment of the fees required for these changes are paid as required by section 45-11-05.1 or 45-11-08.4. If a partnership fails to file the statement of renewal when due, the fictitious name certificate must be canceled by the secretary of state and notice of the cancellation must be mailed to the address of the principal place of business.

SECTION 3. AMENDMENT. Section 45-11-08.1 of the North Dakota Century Code is amended and reenacted as follows:

45-11-08.1. Principal place of business. Each partnership which files a fictitious name certificate shall have and continuously maintain on file in the office of the secretary of state, an address of the principal place of business, which must also serve as a mailing address. The address of the principal place of business may be changed by submitting a statement executed by the partnership with a filing fee of ten dollars notifying the secretary of state. The statement notification must contain the name of the partnership, the state or country of organization, and the new address of the principal place of business.

SECTION 4. Section 45-11-10 of the North Dakota Century Code is created and enacted as follows:

45-11-10. Secretary of state - Exempt records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is an exempt record as defined by subsection 5 of section 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any social security number or federal tax

identification number the secretary of state determines to be a closed record before a copy of any document is released to the public.

SECTION 5. Section 47-25-02.1 of the North Dakota Century Code is created and enacted as follows:

47-25-02.1. Electronic filing of trade name registration. A person or organization may file a trade name registration by electronic communication with the secretary of state. The following definitions apply to electronic trade name filings with the secretary of state:

1. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
2. "Electronic communication" means any form of communication acceptable to the secretary of state, 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.
3. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
4. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
5. "Legal recognition" means a record or signature may not be denied legal effect or enforceability solely because it is in electronic form. If a provision of this chapter requires:
 - a. A record to be in writing, an electronic record satisfies the requirement.
 - b. A signature, an electronic signature satisfies the requirement.
6. "Signed" means 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 document, and is communicated by a method or medium of communication acceptable to the secretary of state.

SECTION 6. AMENDMENT. Section 47-25-03 of the North Dakota Century Code is amended and reenacted as follows:

47-25-03. Trade name - Nature. A trade name registered may not be the same as or deceptively similar to any other trade name, domestic or foreign corporation name, domestic or foreign limited liability company name, domestic or foreign limited partnership name, domestic or foreign limited liability partnership name, domestic or foreign limited liability limited partnership name, or a name the right to which is in any manner reserved or registered in the office of the secretary of

state, unless there is filed with the trade name registration a written consent of the holder of the similar name to use the proposed name, or if a franchise, a written consent from the franchiser. A trade name may not contain the word "company", "corporation", "incorporated", "limited", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of any of these words unless the owner of the trade name is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership as indicated by the words used in the name.

SECTION 7. AMENDMENT. Section 47-25-04 of the North Dakota Century Code is amended and reenacted as follows:

47-25-04. Trade names - Registration - Fees - Renewal - Notice. For the registration of a trade name under this chapter, the registrant shall pay to the secretary of state a fee of twenty-five dollars for an original registration, a fee of twenty-five dollars for an assignment, and a fee of ten dollars for a consent to use of a similar name or any other change in the original registration under this chapter. A registration remains in force for a period of five years from the date of the original registration and may be renewed within ~~thirty~~ ninety days before its expiration date by reregistering in the same manner as an original registration. The secretary of state shall notify the registrant by mail at least ninety days before the expiration of the registration.

The secretary of state may destroy all registrations or renewals one year after expiration.

SECTION 8. AMENDMENT. Section 47-25-06 of the North Dakota Century Code is amended and reenacted as follows:

47-25-06. Assignment. If the interest of any person engaged in business under a trade name changes or ceases to exist, or any other person becomes interested therein, the assignment of ownership must be registered within ninety days after any change takes place. Any trade name and its registration is assignable with the goodwill of the business in which the trade name is used. Assignment must be made by the assignor on forms ~~provided~~ prescribed by the secretary of state setting forth the trade name, the names and addresses of each assignee, and the nature of the business. The assignment must be filed by the secretary of state who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal.

SECTION 9. Section 47-25-08 of the North Dakota Century Code is created and enacted as follows:

47-25-08. Secretary of state - Exempt records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is an exempt record as defined by subsection 5 of section 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any social security number or federal tax identification number the secretary of state determines to be a closed record before a copy of any document is released to the public.

Approved March 27, 2003
Filed March 28, 2003

PRINTING LAWS

CHAPTER 391

SENATE BILL NO. 2340

(Senators Nelson, Dever, Trenbeath)
(Representatives Hawken, Thorpe, Warner)

CORRECTION OF ERRORS IN STATUTORY PROVISIONS

AN ACT to amend and reenact section 46-03-10 of the North Dakota Century Code, relating to correction of errors in statutory provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 46-03-10 of the North Dakota Century Code is amended and reenacted as follows:

46-03-10. Arranging and correcting laws. In arranging the laws, memorials, and resolutions for publication, the legislative council shall make such corrections in orthography, grammatical construction, and punctuation of the same as in its judgment are proper. When any law published in the code contains a reference to customary weights and measures, the equivalent weights and measures of the metric system must be added to the law as an insertion. When any such words or clauses are inserted, the same must be enclosed in brackets. In arranging the laws for publication and in publishing and maintaining the laws, the legislative council may change statutory references to numbers and letters to correct references to redesignated or repealed chapters, sections, or portions of sections and change statutory references to institutions, agencies, offices, and officers to be consistent with other statutory usage and constitutional provisions.

Approved April 14, 2003
Filed April 14, 2003

CHAPTER 392

SENATE BILL NO. 2324

(Senators Wardner, Andrist, Krauter)
(Representatives Froseth, N. Johnson)

LEGAL AND OFFICIAL NEWSPAPER QUALIFICATIONS

AN ACT to amend and reenact sections 46-05-01, 46-06-01, 46-06-02, and 46-06-03 of the North Dakota Century Code, relating to qualifications of legal newspapers, official newspapers in counties where no newspaper is published, and placement of newspapers on the ballot; and to repeal section 46-05-02 of the North Dakota Century Code, relating to newspaper affidavits filed with county auditors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 46-05-01 of the North Dakota Century Code is amended and reenacted as follows:

46-05-01. Newspapers qualified to do legal printing - File copies with state historical society - Publishing notices in adjoining county. Before any newspaper in this state is qualified to publish any legal notice or any matter required by law to be printed or published in some newspaper in the state, or any public notice for any political subdivision within this state, the newspaper must:

1. Have been established in a regular and continuous circulation of at least one year, with a bona fide subscription list of at least one hundred fifty regular subscribers;
2. Be nonsectarian and printed at least ~~three-fourths~~ in English; and
3. Have been admitted to the United States mails and have complied with the requirements of the federal laws governing periodicals mailing privileges for at least one year.

~~In the county where no newspaper having the above-prescribed qualifications is published, any newspaper at the county seat of that county is entitled to publish the legal notices even though it may not have been established one year.~~ The owner or publisher of each legal newspaper shall send to the state historical society, to the address designated by the director, ~~two copies~~ one copy of each issue of the newspaper. In a county in which no newspaper is published, any notice required by law to be published may be published in a newspaper published in an adjoining county and having a general circulation in the county.

SECTION 2. AMENDMENT. Section 46-06-01 of the North Dakota Century Code is amended and reenacted as follows:

46-06-01. Selection of official newspaper. At the general election starting with the year 1978 and every four years thereafter, in accordance with section 46-06-06, the qualified electors in each county shall select one newspaper in the county ~~which must,~~ or if there is no newspaper published in the county, then a

newspaper published in an adjoining county with general circulation in the first county, to be the official newspaper within such county.

SECTION 3. AMENDMENT. Section 46-06-02 of the North Dakota Century Code is amended and reenacted as follows:

46-06-02. Qualifications required of an official newspaper. A newspaper is qualified to serve as an official newspaper if it meets all the requirements of a legal newspaper set forth in section 46-05-01 and maintains its principal editorial office within the county in which it is a candidate for official newspaper. In a county in which no newspaper maintains its principal editorial office, a newspaper published in an adjoining county with general circulation in the first county is qualified to serve as that county's official newspaper.

SECTION 4. AMENDMENT. Section 46-06-03 of the North Dakota Century Code is amended and reenacted as follows:

46-06-03. Application to place name on ballot at primary election. The county auditor shall place the name of a newspaper upon the primary election ballot if the newspaper is qualified to serve as the official newspaper within the county and if, not more than seventy days nor less than sixty days and before four p.m. of the sixtieth day prior to the primary election, an application asking that the name of the newspaper be placed upon the ballot to be voted upon for nomination as official newspaper of the county ~~is~~ and an affidavit indicating the newspaper meets all of the requirements of an official newspaper pursuant to sections 46-05-01 and 46-06-02 are filed with the county auditor by a person, partnership, corporation, or limited liability company owning or operating the newspaper. The county auditor shall endorse upon the application the name of the newspaper and the date upon which the application is filed.

SECTION 5. REPEAL. Section 46-05-02 of the North Dakota Century Code is repealed.

Approved April 4, 2003

Filed April 4, 2003

PROPERTY

CHAPTER 393

HOUSE BILL NO. 1232
(Representatives Maragos, Severson)
(Senator Krebsbach)

PROPERTY LEASE SECURITY DEPOSITS

AN ACT to amend and reenact section 47-16-07.1 of the North Dakota Century Code, relating to security deposits for the lease of real property or a dwelling.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-16-07.1 of the North Dakota Century Code is amended and reenacted as follows:

47-16-07.1. Real property and dwelling security deposits - Limitations and requirements.

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 ~~passbook~~ checking account ~~established solely for security deposits~~ 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 thousand five hundred dollars.
2. A lessor may apply security deposit money and accrued interest upon termination of a lease towards:
 - a. Any damages the lessor has suffered by reason of deteriorations or injuries to the real property or dwelling through the negligence of the lessee or the lessee's guest.
 - b. Any unpaid rent.
 - c. The costs of cleaning or other repairs which were the responsibility of the lessee, and which are necessary to return the dwelling unit to its original state when the lessee took possession, reasonable wear and tear excepted.

Application of any portion of a security deposit not paid to the lessee upon termination of the lease must be itemized by the lessor. Such itemization together with the amount due must be delivered or mailed to the lessee at the last address furnished lessor, along with a written

notice within thirty days after termination of the lease and delivery of possession by the lessee. The notice must contain a statement of any amount still due the lessor or the refund due the lessee. A lessor is not required to pay interest on security deposits if the period of occupancy was less than nine months in duration.

3. A lessor is liable for treble damages for any security deposit money withheld without reasonable justification.
4. Upon a transfer in ownership of the leased real property or dwelling, the security deposit and accrued interest shall be transferred to the grantee of the lessor's interest. The grantor shall not be relieved of liability under this section until transfer of the security deposit to the grantee. The holder of the lessor's interest in the real property or dwelling at the termination of a lease shall be bound by this section even though such holder was not the original lessor who received the security deposit.
5. This section applies to the state and to political subdivisions of the state that lease real property or dwellings and require money as a security deposit.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 394

HOUSE BILL NO. 1169

(Representative Froseth)

(Senator Espegard)

(At the request of the Secretary of State)

SERVICE MARK REGISTRATION

AN ACT to amend and reenact sections 47-22-01, 47-22-02, 47-22-03, 47-22-04, 47-22-05, 47-22-06, 47-22-06.1, 47-22-07, 47-22-08, 47-22-09, 47-22-10, 47-22-11, 47-22-12, and 47-22-13 of the North Dakota Century Code, relating to registration and protection of service marks; to provide for retroactive application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-22-01 of the North Dakota Century Code is amended and reenacted as follows:

47-22-01. Definitions. As used in this chapter, unless the context otherwise requires, the term:

1. "Applicant" embraces the person filing an application for registration of a ~~trademark~~ mark under this chapter and that person's legal representatives, successors, or assigns.
2. "Mark" includes any trademark or service mark entitled to registration under this chapter whether or not registered.
3. "Person" means any individual, firm, partnership, corporation, limited liability company, association, union, or other organization.
- 3- 4. "Registrant" embraces the person to whom the registration of a ~~trademark~~ mark under this chapter is issued and that person's legal representatives, successors, or assigns.
5. "Service mark" means any word, name, symbol, or device or any combination thereof used by a person to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.
- 4- 6. "Trademark" means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by that person and to distinguish them from goods made or sold by others.

For the purposes of this chapter, a trademark shall be deemed to be "used" in this state when it is placed in any manner on the goods or their containers or on the tags

or labels affixed thereto and such goods are sold or otherwise distributed in this state.

SECTION 2. AMENDMENT. Section 47-22-02 of the North Dakota Century Code is amended and reenacted as follows:

47-22-02. Registrability. A ~~trademark~~ mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

1. Consists of or comprises immoral, deceptive, or scandalous matter;
2. Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute;
3. Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof;
4. Consists of or comprises the name, signature, or portrait of any living individual, except with that individual's written consent;
5. Consists of a mark which:
 - a. When applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;
 - b. When applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or
 - c. Is primarily merely a surname provided, however, that nothing in this subsection shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the five years next preceding the date of the filing of the application for registration; or
6. Consists of or comprises a ~~trademark~~ mark that resembles a ~~trademark~~ mark registered in this state or a trade name, corporate name, limited liability company name, limited liability partnership name, limited partnership name, limited liability limited partnership name, or fictitious name registered with the office of the secretary of state, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

SECTION 3. AMENDMENT. Section 47-22-03 of the North Dakota Century Code is amended and reenacted as follows:

47-22-03. Application for registration. Subject to the limitations set forth in this chapter, any person who adopts and uses a ~~trademark~~ mark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of

state, an application for registration of that ~~trademark~~ mark setting forth, but not limited to, the following information:

1. The name and business address of the person applying for such registration; if a corporation, the state or country of incorporation and address of the principal place of business; if a limited partnership, the state or country of the organization and address of the principal place of business; and, if a limited liability company, the state or country of organization and the principal place of business;
2. The goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class, or classes, in which such goods or services fall;
3. The date when the ~~trademark~~ mark was first used anywhere and the date when it was first used in this state by the applicant or the applicant's predecessor in business; and
4. A statement that the applicant is the owner of the ~~trademark~~ mark and that no other person has the right to use such ~~trademark~~ mark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

The application must be signed by the applicant or by a member of the firm, an officer of the corporation or association, or manager of the limited liability company applying.

The application must be accompanied by a specimen or facsimile of such ~~trademark~~ mark in duplicate.

The application for registration must be accompanied by a filing fee of thirty dollars for one class of goods or services and twenty dollars for each additional class, payable to the secretary of state.

SECTION 4. AMENDMENT. Section 47-22-04 of the North Dakota Century Code is amended and reenacted as follows:

47-22-04. Certificate of registration. Upon compliance by the applicant with the requirements of this chapter, the secretary of state shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration must be issued under the signature of the secretary of state and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, and, if a limited liability company, the state of organization, of the person claiming ownership of the ~~trademark~~ mark, the date claimed for the first use of the ~~trademark~~ mark anywhere and the date claimed for the first use of the ~~trademark~~ mark in this state, the class, or classes, of goods or services and a description of the goods or services on which the ~~trademark~~ mark is used, a facsimile of the ~~trademark~~ mark, the registration date, and the term of registration.

Any certificate of registration issued by the secretary of state under the provisions hereof or a copy thereof duly certified by the secretary of state is admissible in evidence as competent and sufficient proof of the registration of such ~~trademark~~ mark in any action or judicial proceedings in any court of this state.

SECTION 5. AMENDMENT. Section 47-22-05 of the North Dakota Century Code is amended and reenacted as follows:

47-22-05. Duration and renewal. Registration of a ~~trademark~~ mark hereunder is effective for a term of ten years from the date of registration and, upon application filed prior to the expiration of such term, on a form to be furnished by the secretary of state, the registration may be renewed in the same manner as a new application for a like term. A renewal fee of thirty dollars for one class of goods or services and twenty dollars for each additional class, payable to the secretary of state, must accompany the application for renewal of the registration.

A ~~trademark~~ registration may be renewed for successive periods of ten years in like manner.

The secretary of state shall notify registrants ~~of trademarks~~ hereunder of the necessity of renewal within ninety days preceding the expiration of the ten years from the date of registration by writing to the last known address of the registrants.

SECTION 6. AMENDMENT. Section 47-22-06 of the North Dakota Century Code is amended and reenacted as follows:

47-22-06. Assignment. Any ~~trademark~~ mark and its registration hereunder shall be assignable with the goodwill of the business in which the ~~trademark~~ mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the ~~trademark~~ mark. Assignment must be made by the assignor on forms provided by the secretary of state setting forth the name and business address of the assignor and the assignee, the ~~trademark~~ mark certificate number, and the class or classes of goods or services on which the ~~trademark~~ mark will appear. The assignment must be filed by the secretary of state upon the payment of a fee of thirty dollars payable to the secretary of state who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this chapter is void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state within three months after the date thereof or prior to such subsequent purchase.

SECTION 7. AMENDMENT. Section 47-22-06.1 of the North Dakota Century Code is amended and reenacted as follows:

47-22-06.1. Change of name or address of registrant. Any registrant that effects a name change must record that name change with the secretary of state. The secretary of state must record the name change upon the payment of a fee of thirty dollars and filing of the following:

1. A notarized statement reciting the name change if the registrant is an individual.
2. A certificate of fact reciting the name change duly authenticated by the proper officer of the state or country if the registrant is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership incorporated or organized in another state or country and does not have a certificate of authority to transact business in North Dakota.
3. An amendment or application for amended certificate of authority for a registrant that is a corporation, limited liability company, limited

partnership, limited liability partnership, or limited liability limited partnership registered with the secretary of state.

The secretary of state shall issue a certificate in the new name of the registrant for the remainder of the term of the registration or of the last renewal thereof.

A registrant must notify the secretary of state ~~in writing~~ when effecting a change of address. A corporate annual report or limited partnership renewal filed by the secretary of state that reflects a change of address of the principal place of business of a registrant may serve as such notice.

SECTION 8. AMENDMENT. Section 47-22-07 of the North Dakota Century Code is amended and reenacted as follows:

47-22-07. Records. The secretary of state shall keep for public examination a record of all ~~trademarks~~ marks registered or renewed under this chapter.

SECTION 9. AMENDMENT. Section 47-22-08 of the North Dakota Century Code is amended and reenacted as follows:

47-22-08. Cancellation. The secretary of state shall cancel from the register:

1. Any registration concerning which the secretary of state shall receive a voluntary written and signed request for cancellation thereof from the registrant or the assignee of record.
2. All registrations granted under this chapter and not renewed in accordance with the provisions hereof.
3. Any registration concerning which a state district court shall find any of the following:
 - a. That the registered ~~trademark~~ mark has been abandoned.
 - b. That the registrant is not the owner of the ~~trademark~~ mark.
 - c. That the registration was granted improperly.
 - d. That the registration was obtained fraudulently.
 - e. That the registration ~~trademark~~ mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a ~~trademark~~ mark registered by another person in the United States patent office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that should the registrant prove that the registrant is the owner of a concurrent registration of the registrant's ~~trademark~~ mark in the United States patent office covering an area including this state, the registration hereunder shall not be canceled.
4. When a district court shall order cancellation of a registration on any ground.

5. Any ~~trademark~~ mark whose registered owner is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership that has ceased to exist for six months.

SECTION 10. AMENDMENT. Section 47-22-09 of the North Dakota Century Code is amended and reenacted as follows:

47-22-09. Classification. The following general classes of goods and services are established for convenience of administration of this chapter, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a ~~trademark~~ mark may include any or all goods upon which, or services with which, the ~~trademark~~ mark is actually being used.

The said classes are as follows:

1. Goods.
 - ~~a.~~ a. Raw or partly prepared materials.
 - ~~2.~~ b. Receptacles.
 - ~~3.~~ c. Baggage, animal equipment, portfolios, and pocketbooks.
 - ~~4.~~ d. Abrasives and polishing materials.
 - ~~5.~~ e. Adhesives.
 - ~~6.~~ f. Chemicals and chemical compositions.
 - ~~7.~~ g. Cordage.
 - ~~8.~~ h. Smokers' articles, not including tobacco products.
 - ~~9.~~ i. Explosives, firearms, equipments, and projectiles.
 - ~~10.~~ j. Fertilizers.
 - ~~11.~~ k. Inks and inking materials.
 - ~~12.~~ l. Construction materials.
 - ~~13.~~ m. Hardware and plumbing and steam-fitting supplies.
 - ~~14.~~ n. Metals and metal castings and forgings.
 - ~~15.~~ o. Oils and greases.
 - ~~16.~~ p. Paints and painters' materials.
 - ~~17.~~ q. Tobacco products.
 - ~~18.~~ r. Medicines and pharmaceutical preparations.
 - ~~19.~~ s. Vehicles.

- ~~20.~~ t. Linoleum and oiled cloth.
- ~~21.~~ u. Electrical apparatus, machines, and supplies.
- ~~22.~~ v. Games, toys, and sporting goods.
- ~~23.~~ w. Cutlery, machinery, and tools, and parts thereof.
- ~~24.~~ x. Laundry appliances and machines.
- ~~25.~~ y. Locks and safes.
- ~~26.~~ z. Measuring and scientific appliances.
- ~~27.~~ aa. Horological instruments.
- ~~28.~~ bb. Jewelry and precious-metal ware.
- ~~29.~~ cc. Brooms, brushes, and dusters.
- ~~30.~~ dd. Crockery, earthenware, and porcelain.
- ~~31.~~ ee. Filters and refrigerators.
- ~~32.~~ ff. Furniture and upholstery.
- ~~33.~~ gg. Glassware.
- ~~34.~~ hh. Heating, lighting, and ventilating apparatus.
- ~~35.~~ ii. Belting, hose, machinery packing, and nonmetallic tires.
- ~~36.~~ jj. Musical instruments and supplies.
- ~~37.~~ kk. Paper and stationery.
- ~~38.~~ ll. Prints and publications.
- ~~39.~~ mm. Clothing.
- ~~40.~~ nn. Fancy goods, furnishings, and notions.
- ~~41.~~ oo. Canes, parasols, and umbrellas.
- ~~42.~~ pp. Knitted, netted, and textile fabrics, and substitutes therefor.
- ~~43.~~ qq. Thread and yarn.
- ~~44.~~ rr. Dental, medical, and surgical appliances.
- ~~45.~~ ss. Soft drinks and carbonated waters.
- ~~46.~~ tt. Foods and ingredients of foods.
- ~~47.~~ uu. Wines.

- 48. vv. Malt beverages and liquors.
- 49. ww. Distilled alcoholic liquors.
- 50. xx. Merchandise not otherwise classified.
- 54. yy. Cosmetics and toilet preparations.
- 52. zz. Detergents and soaps.

2. Services.

- a. Miscellaneous.
- b. Advertising and business.
- c. Insurance and financial.
- d. Construction and repair.
- e. Communications.
- f. Transportation and storage.
- g. Material treatment.
- h. Education and entertainment.

SECTION 11. AMENDMENT. Section 47-22-10 of the North Dakota Century Code is amended and reenacted as follows:

47-22-10. Fraudulent registration. Any person who shall for that person, or on behalf of any other person, procure the filing or registration of any ~~trademark~~ mark in the office of the secretary of state under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

SECTION 12. AMENDMENT. Section 47-22-11 of the North Dakota Century Code is amended and reenacted as follows:

47-22-11. Infringement. Subject to the provisions of section 47-22-13, any person who shall:

1. Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a ~~trademark~~ mark registered under this chapter in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or
2. Reproduce, counterfeit, copy, or colorably imitate any such ~~trademark~~ mark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or

advertisements intended to be used upon or in connection with the sale or other distribution in this state of such goods or services;

shall be liable to a civil action by the owner of such registered ~~trademark~~ mark for any or all of the remedies provided in section 47-22-12, except that under subsection 2 the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such ~~trademark~~ mark is intended to be used to cause confusion or mistake or to deceive.

SECTION 13. AMENDMENT. Section 47-22-12 of the North Dakota Century Code is amended and reenacted as follows:

47-22-12. Remedies. Any owner of a ~~trademark~~ mark registered under this chapter may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display, or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from or all damages suffered by reason of such wrongful manufacture, use, display, or sale, or either, and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case, be delivered to an officer of the court, or to the complainant, to be destroyed.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

SECTION 14. AMENDMENT. Section 47-22-13 of the North Dakota Century Code is amended and reenacted as follows:

47-22-13. Common-law rights. Nothing herein shall adversely affect the rights or the enforcement of rights in ~~trademarks~~ marks acquired in good faith at any time at common law.

SECTION 15. RETROACTIVE APPLICATION OF ACT. This Act is retroactive and applies to any registration on file with the secretary of state on the effective date of this Act.

SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 13, 2003
Filed March 13, 2003

PUBLIC BUILDINGS

CHAPTER 395

HOUSE BILL NO. 1297

(Representatives Belter, Hanson, Nelson)
(Senators Christmann, O'Connell, Wardner)

NATIVE COAL BID PREFERENCE

AN ACT to create and enact section 48-05-02.1 of the North Dakota Century Code, relating to the purchasing of coal for heating purposes by the state and political subdivisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 48-05-02.1 of the North Dakota Century Code is created and enacted as follows:

48-05-02.1. Purchase of coal by the state and political subdivisions. The state and all of its institutions, all political subdivisions, and all public schools, when purchasing coal for heating purposes, shall give preference to bidders supplying coal mined in North Dakota if such coal, on an aggregate basis, will provide equivalent British thermal units of heating value in comparison to coal mined elsewhere, if the total bid price of the coal mined in North Dakota and delivered is not higher than the total bid price of coal mined elsewhere and delivered, and if state air pollution permits to operate would not limit the use of North Dakota coal due to emissions limits. In evaluating the comparable price of North Dakota coal versus other coal, the state and its institutions, political subdivisions, and public schools may include any ash handling costs that may be associated with the use of North Dakota coal. The state or any of its institutions, any political subdivision, or any public school, when advertising for or reviewing bids for the purchase of coal for heating purposes, may not mandate the use of any particular type of coal or the region where the coal is to be mined.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 396

SENATE BILL NO. 2347

(Senators Thane, Heitkamp, Wardner)
(Representatives Amerman, Eckre, F. Klein)

GUARANTEED ENERGY SAVINGS CONTRACTS

AN ACT to amend and reenact section 48-05-11 of the North Dakota Century Code, relating to guaranteed energy savings contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 48-05-11 of the North Dakota Century Code is amended and reenacted as follows:

48-05-11. Guaranteed energy savings contracts. The governmental unit shall provide public notice of the meeting at which it proposes to award a guaranteed energy savings contract, the names of the parties to the proposed contract, and the purpose of the contract. After reviewing the report under section 48-05-10, a governmental unit may enter ~~into~~ a guaranteed energy savings contract with a qualified provider if ~~it~~ the governmental unit finds that the amount ~~it~~ the governmental unit would spend on the energy conservation measures recommended in the report is not likely to exceed the amount to be saved in energy and operation costs over a period not exceeding ten years from the date of installation if the recommendations in the report are followed. The contract must include a written guarantee of the qualified provider that the energy and operating cost savings will meet or exceed the costs of the system. The written guarantee must be for a period equal to the financing period, which may provide payments over a period not exceeding ten years. If the governmental unit can document that savings meet or exceed the payment for a period of not less than three years, the governmental unit may request a waiver of the guaranteed portion of the contract for the remainder of the financing term. A guarantee waiver request must be approved by a committee administered by the division of community services. A qualified provider to whom the contract is awarded shall give a sufficient bond to the governmental unit for the faithful performance of the contract. ~~The guaranteed energy savings contract may provide for payments over a period not exceeding ten years.~~

Approved March 26, 2003
Filed March 26, 2003

PUBLIC UTILITIES

CHAPTER 397

SENATE BILL NO. 2115

(Natural Resources Committee)

(At the request of the Public Service Commission)

MISO INFORMATION CONFIDENTIALITY

AN ACT to amend and reenact subsection 7 of section 49-02-02 of the North Dakota Century Code, relating to market monitoring information received from the market monitor of the midwest independent system operator, incorporated.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 49-02-02 of the North Dakota Century Code is amended and reenacted as follows:

7. Cooperate with and receive technical and financial assistance from the United States, any state, or any department, agency, or officer thereof for any purposes relating to federal energy laws that deal with energy conservation, coal conversion, rate reform, and utilities subject to the jurisdiction of the commission. The commission shall also have the authority to file any reports, hold hearings, and promulgate regulations for any such purposes. Information received by the commission which was developed or obtained by the market monitor of the midwest independent system operator, incorporated, or its successor, is exempt from section 44-04-18 and section 6 of article XI of the Constitution of North Dakota.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 398

HOUSE BILL NO. 1363

(Representatives Wald, Delmore, Grande, M. Klein)
(Senators Fischer, Tollefson)

PSC RATE CHANGE HEARINGS

AN ACT to amend and reenact section 49-05-06 of the North Dakota Century Code, relating to public service commission rates change hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-05-06 of the North Dakota Century Code is amended and reenacted as follows:

49-05-06. Hearing by commission on proposed change of rates.

1. Whenever a notice or any schedule stating an individual or joint rate, classification, contract, practice, or rule, increasing or decreasing, or resulting in an increase or decrease in any rate, is filed with the commission, the commission may suspend by motion the rate, classification, contract, practice, or rule but the period of suspension may not extend more than ~~seven~~ six months beyond the time when it otherwise would go into effect. Upon complaint or upon its own initiative without complaint the commission may order a hearing, upon due notice, concerning the propriety of the rate, classification, contract, practice, or rule. On such hearing, the commission shall establish the rates, classifications, contracts, practices, or rules proposed, in whole or in part, or others in lieu thereof, which it finds to be just and reasonable. At any such hearing, the burden to show that the increased rate or proposed change of rate, classification, rule, or practice is just and reasonable is upon the public utility applying for the increase. All such rates, classifications, contracts, practices, or rules, not suspended, on the expiration of thirty days from the time of filing with the commission, or of such lesser time as the commission may grant, become effective rates, classifications, contracts, practices, or rules, subject to the power of the commission, after a hearing had on its own motion or upon complaint, to alter or modify the same.
2. Notwithstanding that the commission may suspend a filing and order a hearing, a public utility may file for interim rate relief as part of its general rate increase application and filing. If interim rates are requested, the commission shall order that the interim rate schedule take effect no later than sixty days after the initial filing date and without a public hearing. The interim rate schedule must be calculated using the proposed test year cost of capital, rate base, and expenses, except that the schedule must include:

 - a. A rate of return on common equity for the public utility equal to that authorized by the commission in the public utility's most recent rate proceeding;

- b. Rate base or expense items the same in nature and kind as those allowed by a currently effective commission order in the public utility's most recent rate proceeding; and
 - c. No change in existing rate design.
- 3. In ordering an interim rate schedule, the commission may require a bond to secure any projected refund required by subsection 4. The terms of the bond, including the amount and surety, are subject to the commission's approval.
- 4. As ordered by the commission, the utility shall promptly refund to persons entitled thereto all interim rate amounts collected by the public utility in excess of the final rates approved by the commission plus reasonable interest at a rate to be determined by the commission.

Approved April 16, 2003
Filed April 16, 2003

CHAPTER 399

HOUSE BILL NO. 1291

(Representatives Nelson, Brusegaard, Headland, Mueller)
(Senators Heitkamp, Urlacher)

ABANDONED RAILROAD RIGHT-OF-WAY SALE

AN ACT to amend and reenact sections 49-09-04.2 and 49-09-04.3 of the North Dakota Century Code, relating to the abandonment and the sale of abandoned railroad right of way.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-09-04.2 of the North Dakota Century Code is amended and reenacted as follows:

49-09-04.2. Abandoned railroad right of way - Sale.

1. When service is discontinued on any railroad right of way in the state and the property is offered for sale, lease, exchange, or other disposal by the railroad or an affiliated entity, the property must first be offered ~~for public purposes~~ to the following persons in the order of priority as follows:
 - a. The present owner or operator-lessee of fixed assets located on the property;
 - b. A person owning land contiguous to the right of way on opposite sides of the right of way;
 - c. A person presenting a reasonable plan for public recreational use of the abandoned property which includes the continuation of current private and public crossings; and
 - d. The adjoining landowner if the adjoining land, at the time of abandonment, is assessed for tax purposes as agricultural land.
2. ~~If right-of-way property along abandoned rail lines is first offered for public purposes and refused, the lessee operators of grain and potato warehouses located on the property must be given the next option to purchase, lease, exchange, or otherwise acquire the property described in their lease. Adjoining agricultural landowners must thereafter be given the next option to acquire the property adjoining their land. The railroad company shall provide written notice to present owners and operator-lessees of fixed assets located on the property and shall publish notice of its intent to dispose of railroad right of way in two consecutive issues of the official county newspaper in each county in which the property is located. A railroad company is not required to give a priority party an option to purchase the property unless the party provides a written statement of interest to purchase the property within thirty days after final publication of notice of the railroad company's intent to dispose of the property. The sale price of abandoned railroad property must be equitable.~~

3. When abandoned railroad right of way is offered for wildlife programs or projects, the proposed acquisitions must first be approved by the board of county commissioners of the county or counties in which the right of way is located under section 20.1-02-17.1 if offered to the state game and fish department or under section 20.1-02-18.1 if offered to the United States department of the interior.
4. If a railroad complies with subsections 1 and 2 and five years have passed since abandonment or since service was discontinued, the railroad may deed the right of way to the county in which the right of way is located upon the acceptance of the county.

SECTION 2. AMENDMENT. Section 49-09-04.3 of the North Dakota Century Code is amended and reenacted as follows:

49-09-04.3. Abandoned railway lines - Removal of abandoned materials - Charge by city, county, or state. Unless otherwise allowed by the commission, any railroad corporation abandoning the use of any railway line in this state shall remove and clear all rail, ties, materials, supplies, and debris from the railway line and leave the surface in a condition easily traversable by a motor vehicle, and shall control noxious weeds on; the railway line right of way within a reasonable time. On request of a city or county in which there is an abandoned line, the commission shall require the railroad corporation, as to railway line right of way in that city or county, within a reasonable time, to take the action required by this section. On request of any state agency having an interest in any property abutting an abandoned railway line right of way, the commission shall require the railroad corporation, as to that railway line right of way, within a reasonable time, to take the action required by this section. The commission shall take all action necessary and appropriate, including the adoption of rules under chapter 28-32, to enforce this section. If a railroad corporation fails to take action required by this section, the requesting entity may do the work on the parts of the abandoned railway line right of way under that entity's jurisdiction. A county may do the work on the parts of the abandoned railway line right of way in the county, regardless of whether those parts are inside city limits. The entity doing the work may charge the railroad corporation the reasonable expense of doing the work. If the charges remain unpaid after ninety days, the entity may certify to the county auditor the amount of the charges imposed under this section. These charges become part of the taxes levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes and placed to the credit of the jurisdiction entitled to the charges. The taxpayer's right to appeal the assessment is governed by chapter 57-23.

Approved April 21, 2003
Filed April 21, 2003

CHAPTER 400**SENATE BILL NO. 2179**

(Senators Cook, Bercier, Trenbeath)
(Representatives Dosch, Schmidt, Weisz)

RAILROAD INCIDENT POLICY POSTING

AN ACT to amend and reenact section 49-10.1-19 of the North Dakota Century Code, relating to the provision of a written critical incident stress debriefing policy.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-10.1-19 of the North Dakota Century Code is amended and reenacted as follows:

49-10.1-19. (~~Effective through July 31, 2003~~) Critical incident stress debriefing policy. Each railroad corporation shall develop a written critical incident stress debriefing policy ~~and shall provide a copy of the policy to each employee.~~ The railroad corporation shall keep a copy of the policy posted in a conspicuous place on an area of its premises commonly frequented by its employees. Penalties for a violation of this section are limited to those allowed in section 49-07-01.1.

Approved March 17, 2003
Filed March 17, 2003

CHAPTER 401

HOUSE BILL NO. 1372

(Representatives D. Johnson, Gulleson, Severson)
(Senators Fischer, Heitkamp, G. Lee)

TRAIN BLOCKING ROADWAY

AN ACT to amend and reenact section 49-11-19 of the North Dakota Century Code, relating to obstructing a crossing by a train; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-11-19 of the North Dakota Century Code is amended and reenacted as follows:

49-11-19. Blocking or obstructing crossing with train - Penalty. ~~No~~

1. A person ~~shall~~ may not operate any train in ~~such~~ a manner as to prevent vehicular use of any roadway for a period of time in excess of ten consecutive minutes except:
 4. a. When necessary to comply with safety signals affecting the safety of the movement of trains;
 2. b. When necessary to avoid striking any object or person on the track;
 3. c. When the train is disabled, by accident or otherwise;
 4. d. When the train is in motion except when engaged in switching operations or loading or unloading operations;
 5. e. When ~~there is no~~ vehicular traffic is not waiting to use the crossing; ~~or~~
 6. f. When necessary to comply with a government statute or regulation; or
 - g. When allowed by written agreement between the governmental entity that controls the roadway and the interested commercial entities. The agreement must indicate which party is responsible for the timely notification of local emergency service providers regarding the crossing that will be blocked and the period of time the crossing will be blocked. ~~Any~~
2. A person ~~who~~ that violates this section is guilty of an ~~infraction~~ a class B misdemeanor. ~~The provisions of this~~ This section ~~do~~ does not apply to ~~cities which have on the date of such obstruction ordinances~~ a city that has an ordinance covering the same subject matter.

CHAPTER 402

SENATE BILL NO. 2358

(Senators Mutch, Tallackson, Thane, Trenbeath)
(Representative Weisz)

RAILROAD INDEMNITY PROVISIONS VOID

AN ACT to create and enact section 49-16-01.1 of the North Dakota Century Code, relating to indemnity provisions on use of railroad rights of way; to amend and reenact sections 49-16-05, 60-06-06.1, and 60-06-15 of the North Dakota Century Code, relating to prohibition of railroad indemnity agreements in right-of-way leases; to provide for a legislative council study; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 49-16-01.1 of the North Dakota Century Code is created and enacted as follows:

49-16-01.1. Indemnity terms void and unenforceable.

1. Except as provided in this section, any provision of a lease, license, or other agreement for the use or occupancy of railroad right of way, or other adjoining property, between a railroad or its representative and a state or federal licensed public grain warehouse or potato warehouse is void to the extent it does any of the following:
 - a. Purports to indemnify or require the defense of the railroad, or its employees, agents, or independent contractors against any loss, liability, or other damage to the extent caused by the sole or concurrent fault of the railroad or its employees, agents, or independent contractors arising out of any claims or actions for bodily injury, death, property damage, or environmental damage or liability.
 - b. Requires the state or federal licensed public grain warehouse or potato warehouse to purchase insurance providing coverage for the railroad or its employees, agents, or independent contractors against any loss, liability, or other damage to the extent caused by the sole or concurrent fault of the railroad or its employees, agents, or independent contractors.
 - c. Purports to exempt, or otherwise excuse, the railroad from any fault or other responsibility for bodily injury, death, property damage other than property damage subject to Public Law No. 104-88 [109 Stat. 847; 49 U.S.C. 11706], or environmental damage or liability to the extent caused by sole or concurrent acts of the railroad or its employees, agents, or independent contractors, or for any environmental damage or condition which exists at the time the lease, license, or other agreement is entered.
2. As used in this section, "fault" is defined under section 32-03.2-01.

3. Notwithstanding any other provision of law, a railroad may require that a state or federal licensed public grain warehouse or potato warehouse contracting for the use or occupancy of railroad right of way, or other adjoining property, provide the following:
- a. Commercial general liability insurance of not more than two million dollars per occurrence and not more than four million dollars for multiple occurrences coverage for bodily injury, death, and property damage arising out of the use or occupancy of the property by the contracting party, including:
 - (1) Damage caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors;
 - (2) An endorsement naming the railroad as an additional insured; and
 - (3) An endorsement under the Federal Employers Liability Act [45 U.S.C. et seq.] if the warehouse engages in the business of transporting goods from the warehouse by means of the railroad in an annual volume in excess of two hundred fifty loaded railroad cars.
 - b. Indemnification and defense of the railroad, its employees and agents for all bodily injury, death, environmental damage, and property damage claims and liability up to two million dollars per occurrence arising out of the use or occupancy of the property, including claims and liability caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors.
 - c. Indemnification and defense of the railroad, its employees and agents for all bodily injury, death, property damage, and environmental damage suffered by the lessee, licensee, or other contracting party, its employees, agents, and invitees, arising from the use or occupancy of the property, including claims and liability caused by the sole or concurrent fault of the railroad, its employees, agents, and contractors unless caused solely by the acts or omission of the railroad that are willful, wanton, or grossly negligent.
 - d. Pollution legal liability insurance up to one million dollars, unless the lessee agrees to a greater amount, to cover liabilities arising from hazardous substances or bulk storage of petroleum products brought on the property, or released on or near the property, or violations of environmental laws, by the lessee, licensee, or other contracting party, its employees, agents, and invitees.
4. Each party to the agreement is responsible for all liability resulting from the environmental condition of the property to the extent caused, aggravated, or contributed to by that party, its employees, agents, and invitees.

SECTION 2. AMENDMENT. Section 49-16-05 of the North Dakota Century Code is amended and reenacted as follows:

49-16-05. Contracts exempting railroad from liability void. Any contract, rule, regulation, or device ~~whatsoever~~ with the purpose or intent of ~~which shall be to enable~~ enabling any railroad ~~corporation~~ to exempt ~~itself~~ that railroad from any liability created by sections ~~49-16-01.1, 49-16-02, 49-16-03, 49-16-04, 49-16-05, and 49-16-08~~ to that extent ~~shall be is~~ void. In any action brought against the railroad ~~corporation,~~ under or by virtue of any of the provisions of this chapter, the ~~corporation~~ railroad may set off ~~therein~~ in that action any sum it has contributed or paid to any insurance relief benefit or indemnity that may have been paid to the injured employee or to the person entitled ~~thereto~~ to the payment on account of the injury or death for which ~~said~~ the action was brought.

SECTION 3. AMENDMENT. Section 60-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

60-06-06.1. Determination - Appropriation. Any party may petition the public service commission to determine rights governed under this chapter. The commission shall determine the matter in accordance with chapter 28-32 and the parties' rights of appeal are as limited by chapter 28-32. ~~The commission shall conduct each hearing required under this section in the county where the right of way at issue is located. The parties to the determination proceeding shall pay the expense of the proceeding, the compensation of any experts, and actual expenses of any employees of the commission while engaged in the proceeding. The commission shall ascertain those costs and expenditures and, after giving the parties notice and opportunity to be heard, and after a hearing to determine the amount of cost and expenditures if a hearing is demanded by either of the parties, shall render a bill and make and transmit to the parties an order for payment by registered mail. Within ten days after receipt of the order, the parties shall pay to the commission the amount of the costs and expenses. The commission shall deposit all costs and expenses collected under this section in the general fund in the state treasury. The value of a leaseholder's improvements may not be considered in determining a reasonable lease rate or selling price. The parties to such a proceeding shall pay the expenses of the proceeding, as determined by the commission, directly to the entities owed. The commission may adopt rules to carry out this section.~~

SECTION 4. AMENDMENT. Section 60-06-15 of the North Dakota Century Code is amended and reenacted as follows:

60-06-15. Application to existing leaseholds. The provisions of this chapter apply to the renewal or sale of existing leaseholds on railroad rights of way, and to existing leaseholds on lands that have ceased to be used for railroad rights of way after the leasehold was first created, and so long thereafter as the lease site remains under the ownership or control of the railroad or an entity that was or is under common ownership or control of the railroad. The value of a leaseholder's improvements may not be considered in determining annual rental or the gross sum for the right, privilege, and easement sought.

SECTION 5. LEGISLATIVE COUNCIL STUDY - ABANDONED AND SURPLUS RAILROAD RIGHTS OF WAY. The legislative council shall study, during the 2003-04 interim, the sale and lease of railroad rights of way. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 6. APPLICATION. Section 49-16-01.1 applies to any lease, license, or other agreement for the use or occupancy of railroad right of way or other adjoining property entered after the effective date of this Act, and to any written renewal or amendment of any prior agreement occurring after the effective date of this Act.

Approved April 24, 2003

Filed April 24, 2003

CHAPTER 403

SENATE BILL NO. 2231

(Senators Espegard, Tallackson)
(Representatives Carlson, Froelich)

TELECOMMUNICATIONS PRICES AND REFUNDS

AN ACT to amend and reenact sections 49-21-01, 49-21-01.3, 49-21-04, 49-21-05, 49-21-07, 49-21-08.1, 49-21-10.1, 49-21-20, and 49-21-23 of the North Dakota Century Code, relating to definitions, price changes, price schedules, dialing parity, refunds, penalties, and cost recovery for telecommunications services and telecommunications companies; and to repeal section 49-21-19 of the North Dakota Century Code, relating to telephone directory notices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01. Definitions. As used in this chapter, unless the context otherwise clearly requires:

1. "Access" means telecommunications services to connect a telecommunications customer or end user with a telecommunications company that allows for the origination or the termination, or both, of WATS, 800, and message toll telecommunications services and private line transport services. ~~"Switched access" includes:~~
 - a. ~~Local exchange central office switching and signaling;~~
 - b. ~~Operator and recording intercept of calls;~~
 - c. ~~Termination of end user lines in the local exchange central office;~~
 - d. ~~The carrier common line charge for the line between the end user's premises and the local exchange central office; and~~
 - e. ~~Telecommunications service, including connections, provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's switched telecommunications services.~~
2. "Competitive local exchange company" means any telecommunications company providing local exchange service, other than an incumbent local exchange carrier, whether by its own facilities, interconnection, or resale.
3. "Eligible telecommunications carrier" means a telecommunications company designated under section 214(e) of the federal act as eligible to receive universal service support in accordance with section 254 of the federal act.

4. "Essential telecommunications price factor" means:
- a. In the case of group I telecommunications companies, a factor determined annually as the lower of:
 - (1) 41.6667 percent of the percentage change of the average annual gross national product price index; or
 - (2) The percentage change of the average annual gross national product price index minus 2.75 percentage points.
 - b. In the case of group II telecommunications companies, a factor determined annually as the lower of:
 - (1) 52.0834 percent of the percentage change of the average annual gross national product price index; or
 - (2) The percentage change of the average annual gross national product price index minus 2.0625 percentage points.
 - c. For purposes of the determination of essential telecommunications price factor, group I telecommunications companies are telecommunications companies with over fifty thousand subscribers and group II telecommunications companies are telecommunications companies with fifty thousand or fewer subscribers.
5. "Essential telecommunications service" means service that is necessary for switched access to interexchange telecommunications companies and necessary for two-way switched communications for both residential and business service within a local exchange area. A charge based on measured service may not be required for residential and business local exchange service. Essential telecommunications services are limited to:
- a. Switched access;
 - b. Any new product or service offered in North Dakota after July 1, 1989, deemed essential by the commission after notice and hearing in accordance with chapter 28-32;
 - c. Billing and collection of the billing company's own essential telecommunications services and billing and collection recording for interexchange carriers to which the local exchange carrier provides feature group G access service;
 - d. Primary directory listing, including nonlisted and nonpublished service, and access to directory assistance;
 - e. Emergency 911 services and emergency operator assistance in local exchange areas in which emergency 911 service is not available;
 - f. Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas;

- g. Installation of the service connection for essential services from the end user's premises to the local exchange network;
- h. Transmission service necessary for the connection between the end user's premises and the local exchange central office switch including a trunk connection that has direct inward dialing and necessary signaling service such as touchtone used by end users for essential telecommunications services;
- i. Single or multiparty flat-rate or measured residence and business service;
- j. Single or multiparty flat-rate or measured combination business and residence service; and
- k. The transmission service line for a coin or pay telephone.

4. "Essential telecommunications service" means the following services:

- a. Switched access;
- b. The transmission service line for a coin or pay telephone;
- c. Installation of the service connection for other essential services from the end user's premises to the local exchange network;
- d. Flat rate or measured residence, business and combination business and residence basic telephone service including the following service elements:
 - (1) Billing and collecting of the telecommunications company's charges for the service.
 - (2) Primary directory listing, including nonlisted and nonpublished service.
 - (3) Access to directory assistance.
 - (4) Access to emergency 911 service and emergency operator assistance in local exchange areas in which emergency 911 service is not available.
 - (5) Except as provided in section 49-02-01.1, mandatory, flat-rate extended area service to designated nearby local exchange areas.
 - (6) Transmission service necessary for the connection between the end user's premises and the local exchange central office switch including a trunk connection that has inward dialing and necessary signaling service such as touchtone used by end users for the service.

6. 5. "Federal act" means the federal Communications Act of 1934, as amended by the federal Telecommunications Act of 1996 [47 U.S.C. 151 et seq.].

7. ~~"Gross national product price index"~~ means the fixed-weighted price index of prices of all the goods and services that make up gross national product, as published quarterly by the United States department of commerce, economics and statistics administration, bureau of economic analysis. ~~"Average annual gross national product price index"~~ means the mean of the gross national product price index published in the third calendar quarter of a year through the second calendar quarter of the following year.
8. 6. "Incumbent local exchange carrier" means a telecommunications company that meets the definition of section 251(h) of the federal act.
7. "Inside wire" and "premise cable" mean the telecommunications wire on the customer's side of a demarcation point or point of interconnection between the telecommunications facilities of the telecommunications company and the customer or premise owner established under title 47, Code of Federal Regulations, part 68, section 68.105.
9. 8. "Interexchange telecommunications company" means a person providing telecommunications service to end users located in separate local exchange areas.
10. 9. "Local exchange area" means a geographic territorial unit established by a telecommunications company for the administration of telecommunications services as approved and regulated in accordance with chapter 49-03.1.
11. 10. "Management costs" means the reasonable direct actual costs a political subdivision incurs in exercising its police powers over the public rights of way.
12. 11. "Mutual telephone company" means a telephone cooperative organized and operating subject to the provisions of this chapter, and such a cooperative shall also be subject to the general law governing cooperatives, except where such general law is in conflict with this chapter.
13. 12. "Nonessential telecommunications service" means any telecommunications service, other than those essential telecommunications services listed in subsection ~~5~~ 4 that a customer has the option to purchase either in conjunction with or separate from any essential telecommunications service. Nonessential telecommunications services include, but are not limited to:
- a. InterLATA and intraLATA message toll service;
 - b. ~~Private line transport service;~~
 - c. Calling features and information or enhanced services such as call waiting, call forwarding, three-way calling, intracall, speed calling, call transfer, voice or data store and forward, message delivery, or caller identification;
 - d. ~~Centrex services and features, not including transmission service described in subdivision h of subsection 5;~~

- e. d. Installation of service connections in addition or supplementary to that described in subdivision g c of subsection 5 4 which also provides transmission service between the end user's premises and the local exchange central office switch;
 - f. e. Mobile telecommunications services using radio spectrum or cellular technology; and
 - g. f. Packet-switched services.
44. 13. "Price" means any charge set ~~and published in accordance with chapter 49-24~~ and collected by a telecommunications company for any telecommunications service offered by it to the public or other telecommunications companies.
45. 14. "Private line transport service" means a telecommunications service to a customer over a circuit dedicated to the customer's exclusive use, within a local exchange area, or between or among local exchanges. Private line transport service includes services to customers who are end users and services to telecommunications companies.
46. 15. "Public right of way" means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which a political subdivision has a legal interest, including other dedicated rights of way for travel purposes, utility easements, and all the area within seventy-five feet [22.86 meters] of the centerline of any county or township highway right of way over which a board of county commissioners or a board of township supervisors has control under section 24-01-42. The term does not include the airwaves above a public right of way with regard to cellular or other wireless telecommunications or broadcast service or utility poles owned by a political subdivision or a municipal utility or a telecommunications company, in whole or part.
47. 16. "Rural telephone company" means a telecommunications company that meets the definition of section 153(37) of the federal act.
48. 17. "Service element" means a telecommunications function or service component that is not useful to the user unless it is combined with one or more other telecommunications functions or service components.
18. "Switched access" means access to include:
- a. Local exchange central office switching and signaling;
 - b. Operator and recording intercept of calls;
 - c. Termination of end user lines in the local exchange central office;
 - d. The carrier common line charge for the line between the end user's premises and the local exchange central office;
 - e. Billing and collection recording for interexchange carriers to which the local exchange carrier provides feature group C access service; and

f. Telecommunications service, including connections, provided to allow transmission service and termination between an interexchange company's premises and the local exchange central office switch for the origination or termination of the interexchange company's switched telecommunications services.

19. "Telecommunications company" means a person engaged in the furnishing of telecommunications service within this state.
20. "Telecommunications service" means the offering for hire of telecommunications facilities, or transmitting for hire telecommunications by means of such facilities whether by wire, radio, lightwave, or other means.

SECTION 2. AMENDMENT. Section 49-21-01.3 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.3. Certain price increases prohibited - Essential telecommunications services. Changes in essential telecommunications services prices are prohibited except as specifically provided for in chapter 49-21 and section 49-02-01.1.

1. All increases or decreases in governmentally imposed surcharges and any financial impact on cost of essential telecommunications services caused by governmentally imposed changes in taxes, accounting practices, or separations procedures must be fully reflected in any price for those services within thirty days of the effective date of the surcharge or change.
- ~~2.~~ The price of essential telecommunications services may be changed according to the essential telecommunications price factor. Increases may be reflected in prices after notice to the company's customers one billing period in advance. A decrease must be reflected in prices within thirty days of the effective date of the price factor. The commission shall publish the essential telecommunications price factor to be effective January 1, 1994, and annually thereafter, determined by reference to the average annual gross national product price index for the four calendar quarters ending with the second calendar quarter of the preceding calendar year. No price for a service may be changed more than once a year. Prices may be changed by service element, but the aggregate annual price change for a service may not exceed the essential telecommunications price factor. Complaints may be made pursuant to section 49-21-06 for any prices changed under this subsection. A discounted price for an essential telecommunications service is not the price of a service for purposes of this section. Discontinuing or altering any discount price for an essential telecommunications service is not a price change as regulated by this subsection.
- ~~3.~~ 2. Nothing in this section prohibits the lowering of a price of an essential service based on reasonable business practices in a competitive environment provided that no price change may be anticompetitive or otherwise in violation of antitrust or unfair trade practice laws.
4. 3. Whenever a price change provided for in this section is less than three percent of the existing price, notwithstanding any time limitations in this

section, a telecommunications company may accumulate such changes in price subject to the following conditions:

- a. Price increases may be accumulated up to a percentage total of five percent.
- b. Price decreases may be accumulated only to the extent that there is an offsetting accumulated price increase of an equal or greater percentage. Accumulated price decreases may never exceed accumulated price increases.
- c. Price decreases may be accumulated only for two years beginning January first of the year in which the change is allowed.
- d. Accumulated price increases may be implemented at the discretion of the telecommunications company.
- e. The effective date of implementation of an accumulated price change may be prospective only, and in accordance with the filing requirements of section 49-21-04.

- ~~5.~~ 4. The monthly price of residence service for ~~group 4~~ telecommunications companies ~~defined in subsection 2 of section 49-21-04~~ with over fifty thousand subscribers may be increased after July 31, 1999, up to fifteen dollars and fifty cents and may be increased after June 30, 2000, up to eighteen dollars. A telecommunications company increasing prices under this subsection must submit a report to the commission reasonably demonstrating that it reduced the prices of its intrastate intraLATA message toll service and intrastate switched access, as such prices existed on January 1, 1999, in aggregate by an annual amount not less than the annual revenue increase resulting from the service price increases under this subsection. Reductions in message toll and switched access prices attributable to the price increases under this section must be made by similar percentages as to be accomplished in a competitively neutral manner. The commission may review the report and may set aside pursuant to section 49-21-06 the prices of intraLATA message toll service and intrastate switched access if the reductions have not been made in a revenue neutral manner and by similar percentages. Prices set aside pursuant to this section remain effective until the effective date of revised prices filed by the telecommunications company within forty-five days of the commission's order.
- ~~6.~~ 5. The commission may investigate an increased price allowed pursuant to subsection ~~5~~ 4 and may set aside all or part of the increase if it finds the price is unfair or unreasonable, provided a price for residence service at or below the price in effect on January 1, 1999, may not be set aside under this subsection or section 49-21-06. The commission may not set aside all or part of an increased price as unfair or unreasonable if the commission determines after notice and opportunity for hearing the average cost of providing residence service, as calculated under either representative embedded or forward-looking economic cost methodologies, including shared and common costs, exceeds the price resulting from the increase.
- ~~7.~~ 6. Subject to the limitations of this section, nothing in this chapter prohibits an incumbent local exchange carrier from deaveraging local exchange

service prices provided the incumbent local exchange carrier agrees to amend its commission approved interconnection agreements to allow for deaveraged interconnection prices effective concurrently with the deaveraged retail prices.

SECTION 3. AMENDMENT. Section 49-21-04 of the North Dakota Century Code is amended and reenacted as follows:

49-21-04. Price schedules filed with the commission. Each telecommunications company shall file with the commission in such form and detail as it may require, subject to considerations for maintaining trade secrets or commercial confidentiality:

1. Schedules showing all prices, including those prices set by contract and the individual unbundled or unpackaged price of any essential service, in effect at the time for any essential telecommunications service rendered to the public by such telecommunications company within this state;
2. All rules and regulations which in any manner affect the prices charged or to be charged for such essential service; and
3. All new prices and any price ~~changes~~ increases of essential services at least twenty days before the effective date of the new price or price ~~change~~ increase, unless the commission upon application and for good cause allows a lesser time, and except prices changed in accordance with subsection 1 of section 49-21-01.3, which will be filed at least ten days before the expiration of the thirty-day period mandated in that section. No price or price change is effective until filed in accordance with this chapter.

SECTION 4. AMENDMENT. Section 49-21-05 of the North Dakota Century Code is amended and reenacted as follows:

49-21-05. Schedule of prices to be ~~on file~~ available for public inspection. The commission may require any telecommunications company to ~~keep on file and accessible~~ make available to the public, subject to considerations for maintaining trade secrets or commercial confidentiality, ~~at any city in which the telecommunications company has a public office,~~ a printed or electronic schedule of ~~such~~ prices for ~~essential~~ telecommunications services offered by the telecommunications company as the commission may deem necessary.

SECTION 5. AMENDMENT. Section 49-21-07 of the North Dakota Century Code is amended and reenacted as follows:

49-21-07. Discrimination unlawful. It shall be unlawful for any telecommunications company to make any unjust or unreasonable discrimination in prices, practices, or service for or in connection with like telecommunications service, or give any undue or unreasonable preference or advantage to any person or telecommunications company or to subject any person or telecommunications company to any undue or unreasonable prejudice or disadvantage in the service rendered by it to the public or to a telecommunications company, or to charge or receive for any such service rendered, more or less than the prices provided for in the schedules then on file with the commission. A telecommunications company providing intrastate interexchange message toll services shall charge uniform prices on all routes where it offers such services. A telecommunications company providing

local exchange service and message toll and private line services shall cover in its price for message toll and private line services, the price of providing access service in its own exchanges. Nothing in this chapter shall be construed to prevent any telecommunications company from offering or providing volume or other discounts based on reasonable business practices; from introducing promotional offerings, including special incentives, competitive discounts, and price waivers; from passing through any state, municipal or local taxes or fees to the specific geographic areas from which the taxes or fees originate; from contracting with a retail subscriber to provide telecommunications services at prices negotiated with the subscriber to meet service requests of the subscriber or competitive offerings of another telecommunications company; or from furnishing free telecommunications service or service at reduced prices to its officers, agents, servants, or employees.

SECTION 6. AMENDMENT. Section 49-21-08.1 of the North Dakota Century Code is amended and reenacted as follows:

49-21-08.1. Dialing parity - IntraLATA equal access. ~~The provisioning of dialing parity on an intraLATA basis, otherwise known as 1 + intraLATA equal access, may not be required to be provided by any company providing local exchange service prior to January 1, 2000.~~ Every local exchange carrier shall provide intraLATA 1 + equal access dialing parity ~~no later than January 1, 2000.~~

SECTION 7. AMENDMENT. Section 49-21-10.1 of the North Dakota Century Code is amended and reenacted as follows:

49-21-10.1. Excessive charges - Refunds. When complaint has been made to the commission or by the commission on its own motion concerning any price for a telecommunications service, and the commission has found, upon a hearing after notice given as required by law, that the telecommunications company has charged for such service a price in excess of the price permitted under section 49-21-01.3, has discriminated unreasonably, or has otherwise violated a statute, rule, or order, the commission may order that the telecommunications company make due refunds or reparations, with interest from ~~the~~ a date of collection ~~not earlier than two years from when the complaint was filed.~~

SECTION 8. AMENDMENT. Section 49-21-20 of the North Dakota Century Code is amended and reenacted as follows:

49-21-20. Penalty. Any person who shall violate any of the provisions of ~~sections~~ section 49-21-18 ~~and 49-21-19~~ shall be guilty of a class B misdemeanor.

SECTION 9. AMENDMENT. Section 49-21-23 of the North Dakota Century Code is amended and reenacted as follows:

49-21-23. Construction of facilities - Cost recovery.

1. A telecommunications company is not required to construct, modify, or extend telecommunications facilities at the request or for the use of another telecommunications company except as required by the federal act.
2. The commission must allow a telecommunications company to recover in advance from the benefited company or customer any nonrecurring costs incurred at the request of another telecommunications company, a particular customer, or to comply with a commission order, including any order issued under section 49-21-10.2, for construction, modification or

extension of the company's network in excess of the normal course of business and primarily for the benefit of another telecommunications company or for a particular customer, and not due to any negligence or misconduct on the part of the company. This subsection does not apply to:

- a. Costs incurred to extend or modify a network to provide for interconnection, collocation, network access, or the sale of unbundled network elements, unless those costs are identifiable and specific to a particular end-user customer, or wholesale services to another telecommunications company under the federal act;
- b. Costs incurred to remedy discriminatory or unequal treatment that has been found to exist by the commission or an arbitrator; or
- c. Costs for which some other recovery treatment is specifically provided in federal or state law.

SECTION 10. REPEAL. Section 49-21-19 of the North Dakota Century Code is repealed.

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 404**HOUSE BILL NO. 1134**

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

**ESSENTIAL TELECOMMUNICATIONS SERVICES
UNBUNDLING**

AN ACT to amend and reenact section 49-21-01.4 of the North Dakota Century Code, relating to unbundling of essential services in telecommunications services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01.4 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.4. Purchase of essential telecommunications services. Customers of any telecommunications company that provides essential telecommunications services must be permitted to purchase essential telecommunications services separate from all other telecommunications services. A telecommunications company may disconnect local exchange or essential telecommunications services only pursuant to rules adopted by the commission.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 405

HOUSE BILL NO. 1135

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

TELECOMMUNICATIONS SERVICE REGULATION

AN ACT to amend and reenact section 49-21-01.7 of the North Dakota Century Code, relating to powers of the public service commission relating to the regulation for the provision of telecommunication service.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 49-21-01.7 of the North Dakota Century Code is amended and reenacted as follows:

49-21-01.7. Powers in general. The commission has the power to:

1. Investigate all methods and practices of telecommunications companies.
2. Require telecommunications companies to conform to the laws of this state and to all rules, regulations, and orders of the commission not contrary to law.
3. Require copies of reports as to rates, prices, and terms and conditions of service in effect and used by the company, and all other information deemed relevant and necessary by the commission in the exercise of its authority.
4. Compel obedience to its lawful orders by proceedings of mandamus or injunction or other proceedings, in the name of the state, in any court having jurisdiction of the parties or of the subject matter.
5. Hold hearings on good cause being shown, upon notice and subject to the provisions of chapter 28-32.
6. Employ and fix the compensation of experts, engineers, auditors, attorneys, and other such assistance for complaints, investigations, and other proceedings relating to telecommunications companies. The expense of any hearings, and the compensation and actual expenses of any employees of the commission while engaged upon any such hearings must, upon the order of the commission, be paid by the telecommunications company involved in such hearings. The commission shall ascertain the exact cost and expenditure. After giving the telecommunications company notice and opportunity to demand a hearing, and after a hearing, if any, is held, the commission may render a bill and make an order for payment. The bill and order must be delivered by certified mail or personal delivery to the managing officer of the telecommunications company. Upon receipt of the bill and order for payment, the telecommunications company has thirty days within which to pay the amount billed. All amounts not paid within thirty days after receipt of the bill and order for payment thereafter draw interest at the

rate of six percent per annum. Amounts collected by the commission under this subsection relating to expenses of the regulatory reform review commission must be deposited in the general fund of the state treasury. All other amounts collected by the commission under this subsection must be deposited in a special account within the public service commission.

7. Act upon an application for a certificate of public convenience and necessity under chapter 49-03.1 consistent with section 253 of the federal act, provided a telecommunications company is not required to obtain a certificate of public convenience and necessity to resell telecommunications services.
8. Mediate or arbitrate agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
9. Approve or reject agreements for interconnection, services, or network elements under sections 251 and 252 of the federal act.
10. Receive and approve or reject a statement of generally available terms under section 252(f) of the federal act.
11. Determine whether to terminate a rural telephone company's exemption under section 251(f) of the federal act.
12. Designate telecommunications companies as eligible telecommunications carriers to receive universal service support under sections 214 and 254 of the federal act.
13. Designate geographic service areas for the purpose of determining universal service obligations and support mechanisms under the federal act.
14. Investigate and resolve numbering issues relating to assignment of N11 dialing codes.
15. Adopt rules consistent with state law as are necessary to carry out the powers in subsections 7 through 13 provided the rules may not impose obligations on a telecommunications company that are ~~different or~~ greater than obligations imposed under the act.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 406**HOUSE BILL NO. 1052**

(Legislative Council)
(Regulatory Reform Review Commission)

PERFORMANCE ASSURANCE PLAN

AN ACT to create and enact a new section to chapter 49-21 of the North Dakota Century Code, relating to a performance assurance plan by the public service commission; to provide a continuing appropriation; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 49-21 of the North Dakota Century Code is created and enacted as follows:

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 deposits during a biennium equal one hundred thousand dollars. All moneys deposited 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 deposited 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.

SECTION 2. EXPIRATION DATE. This Act is effective through June 30, 2005, and after that date is ineffective.

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

Approved March 27, 2003

Filed March 28, 2003

PUBLIC WELFARE

CHAPTER 407

HOUSE BILL NO. 1200

(Representatives Devlin, Boucher, Severson)
(Senators Andrist, Fischer, Robinson)

NURSING FACILITY MEDICAL ASSISTANCE APPROPRIATION

AN ACT to provide an appropriation to the department of human services for nursing facility medical assistance payments; 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 health care trust fund in the state treasury, not otherwise appropriated, the sum of \$850,000, or so much of the sum as may be necessary, to the department of human services for the purpose of making nursing facility payments under the medical assistance program, for the period beginning January 1, 2003, and ending June 30, 2003.

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

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 408**SENATE BILL NO. 2359**

(Senator Klein)

(Representatives DeKrey, Devlin, Weisz)

SOCIAL SERVICES PROGRAM ADMINISTRATION

AN ACT to provide for the designation of a regional human service center for program supervision in cases of multicounty program administration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Multicounty agreement to administer social service programs - Selection of regional administration. If two or more counties enter an agreement to jointly administer a program that is under the supervision of the department of human services, a county that is party to the agreement may request designation of a regional human service center for program supervision. The human service center requested must be providing supervision to one or more of the counties party to the multicounty agreement. Within six months of the request, the department of human services shall implement the county's request for the designation or negotiate with the county to reach an agreeable alternative. If the department of human services and the requesting county have not agreed on an alternative within six months of the request, the requesting designation must be implemented. A request for a change in the designation of a regional human service center may not be made for three years after a designation, unless the membership of the multicounty agreement changes.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 409**SENATE BILL NO. 2069**

(Judiciary Committee)

(At the request of the Department of Human Services)

**CHILDREN WITH SERIOUS EMOTIONAL DISORDERS
TREATMENT**

AN ACT to amend and reenact section 50-06-06.13 of the North Dakota Century Code, relating to the provision of treatment services for children with serious emotional disorders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06-06.13 of the North Dakota Century Code is amended and reenacted as follows:

50-06-06.13. Treatment services for children with serious emotional disorders. The department shall establish in all human service regions a program to provide out-of-home treatment services for a medicaid-eligible child with a serious emotional disorder. The department may not require a parent or legal guardian to transfer legal custody of the child in order to have the child placed in an out-of-home treatment program when the sole reason for the placement is the need to obtain services for the child's emotional or behavioral problems ~~and both parents or the legal guardian have agreed to the child's voluntary placement or, if there is a parental disagreement, there is a judicial determination by the juvenile court that placement is in the best interests of the child.~~ With departmental approval, a parent with legal and physical custody of the child may obtain treatment services for the child through the program. A parent without physical custody of a child, who disagrees with a child's treatment under this section, may request a judicial determination regarding the child's treatment.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 410

SENATE BILL NO. 2083

(Human Services Committee)

(At the request of the Department of Human Services)

SPED PROGRAM ELIGIBILITY

AN ACT to create and enact a new section to chapter 50-06.2 of the North Dakota Century Code, relating to disqualifying transfers for determining eligibility for service payments for elderly and disabled; to amend and reenact section 50-06.2-03 of the North Dakota Century Code, relating to the eligibility resource limits of the service payments for elderly and disabled; and to provide statements of legislative intent.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-06.2-03 of the North Dakota Century Code is amended and reenacted as follows:

50-06.2-03. Powers and duties of the state agency. The state agency has the following powers or duties under this chapter:

1. To act as the official agency of the state in the administration of the human services programs for individuals and families in conformity with state and federal requirements.
2. To prepare, at least biennially, a comprehensive human services plan which must:
 - a. Include human services determined essential in effectuating the purposes of this chapter.
 - b. Detail the human services identified by the state agency for provision by human service centers and the services which the county agencies have agreed to make available in approved county plans as a condition for the receipt of any funds allocated or distributed by the state agency.
3. To make available, through county agencies or human service centers, any or all of the services set out in the comprehensive human services plan on behalf of those individuals and families determined to be eligible for those services under criteria established by the state agency.
4. To supervise and direct the comprehensive human services administered by county agencies and human service centers through standard-setting, technical assistance, approval of county and regional plans, preparation of the comprehensive human services plan, evaluation of comprehensive human services programs, and distribution of public money for services.
5. Within the limits of legislative appropriations and at rates determined payable by the state agency, to pay qualified service providers, which meet standards for services and operations, for the provision of the

following services as defined in the comprehensive human services plan which are provided to ~~persons~~ individuals who, on the basis of functional assessments, income, and resources, are determined eligible for the services in accordance with rules adopted by the state agency:

- a. Homemaker services;
 - b. Chore services;
 - c. Respite care;
 - d. Home health aide services;
 - e. Case management;
 - f. Family home care;
 - g. Personal attendant care;
 - h. Adult family foster care; and
 - i. Such other services as the state agency determines to be essential and appropriate to sustain individuals in their homes and in their communities and to delay or prevent institutional care.
6. To take actions, give directions, and adopt rules as necessary to carry out the provisions of this chapter.

For purposes of this chapter, resources do not include the ~~person's~~ individual's primary home and the first fifty thousand dollars ~~in~~ of liquid assets.

SECTION 2. A new section to chapter 50-06.2 of the North Dakota Century Code is created and enacted as follows:

Disqualifying transfers. An individual is not eligible to receive benefits under this chapter if, at any time before or after making application, the individual or the individual's spouse has made any assignment or transfer of any asset for the purpose of making that individual eligible for the benefits. Assignment or transfer includes any action or failure to act that effects a transfer, renunciation, or disclaimer of any asset or interest in an asset that the individual might otherwise assert or have asserted, or which serves to reduce the amount that an individual might otherwise claim from a decedent's estate, a trust or similar device, or another individual obligated by law to furnish support.

SECTION 3. LEGISLATIVE INTENT - SERVICE PAYMENTS FOR ELDERLY AND DISABLED - SLIDING FEE SCALE - INCOME NOT EXCEEDING TWENTY-FIVE THOUSAND DOLLARS. It is the intent of the fifty-eight legislative assembly that the department of human services reduce the income limit levels used for determining copayments for recipients of services under the service payments for elderly and disabled program as of April 1, 2003, by one hundred dollars for each monthly income level for recipients with liquid assets not exceeding twenty-five thousand dollars and that the department disregard a portion of income relating to verified prescription drug costs of the recipient for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 4. LEGISLATIVE INTENT - SERVICE PAYMENTS FOR ELDERLY AND DISABLED - SLIDING FEE SCALE - INCOME EXCEEDING TWENTY-FIVE THOUSAND DOLLARS. It is the intent of the fifty-eighth legislative assembly that the department of human services reduce the income limit levels used for determining copayments for recipients of services under the service payments for elderly and disabled program as of April 1, 2003, by two hundred fifty dollars for each monthly income level for recipients with liquid assets exceeding twenty-five thousand dollars but which do not exceed fifty thousand dollars and that the department disregard a portion of income relating to verified prescription drug costs of the recipient for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 5. LEGISLATIVE INTENT - SERVICE PAYMENTS FOR ELDERLY AND DISABLED - INCOME AND ASSET VERIFICATION. It is the intent of the fifty-eighth legislative assembly that the department of human services verify all income of recipients of services under the service payments for elderly and disabled program by reviewing and maintaining information contained on federal tax forms or similar documents and that the department of human services gather information on the value of income-producing and other assets, excluding an applicant's primary home, furnishings, and personal items, for the biennium beginning July 1, 2003, and ending June 30, 2005.

Approved April 25, 2003

Filed April 25, 2003

CHAPTER 411

SENATE BILL NO. 2155

(Human Services Committee)

(At the request of the Department of Human Services)

TANF DEFINITIONS AND ADMINISTRATION

AN ACT to create and enact a new subsection to section 50-09-01 of the North Dakota Century Code, relating to the definition of work activity for purposes of the temporary assistance for needy families program; and to amend and reenact subdivision m of subsection 2 of section 14-08.1-05.1 and section 50-09-29 of the North Dakota Century Code, relating to work and the requirements for the administration of temporary assistance for needy families.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁵ **SECTION 1. AMENDMENT.** Subdivision m of subsection 2 of section 14-08.1-05.1 of the North Dakota Century Code is amended and reenacted as follows:

- m. Postsecondary education and any other activity permitted or required to be treated by the federal government as work for purposes of calculating a work participation rate under 42 U.S.C. 607(b).

SECTION 2. A new subsection to section 50-09-01 of the North Dakota Century Code is created and enacted as follows:

"Work activity" means any activity permitted or required to be treated as work for purposes of calculating a work participation rate.

SECTION 3. AMENDMENT. Section 50-09-29 of the North Dakota Century Code is amended and reenacted as follows:

50-09-29. Requirements for administration of temporary assistance for needy families.

1. Except as provided in subsections 2, 3, and ~~5 through 7~~ 4, the department of human services, in its administration of the temporary assistance for needy families program, shall:
 - a. Provide assistance to otherwise eligible women in the third trimester of a pregnancy;
 - b. Except as provided in subdivision c, afford eligible households benefits for no more than sixty months;

¹⁸⁵ Section 14-08.1-05.1 was also amended by section 12 of House Bill No. 1183, chapter 138.

- c. ~~Exempt up to twenty percent of the caseload~~ eligible households from the requirements of subdivision b due to mental or physical disability of a parent or child, mental or physical incapacity of a parent, or other hardship including a parent subject to domestic violence as defined in section 14-07.1-01;
- d. Unless an exemption, exclusion, or disregard is required by law, count income and assets whenever actually available;
- e. ~~Unless otherwise required by federal law, and except~~ Except as provided in subdivision k j, and as required to allow the state to receive funds from the federal government under title IV-A, provide no benefits to noncitizen immigrants who arrive in the United States after August 21, 1996; ~~for the first five years of residence in the United States, and after five years of residence, until the immigrant has ten years of work history, provide benefits only after considering the income and assets of the immigrant's sponsor;~~
- f. Limit eligibility to households with total available assets, not otherwise exempted or excluded, of a value established by the department not to exceed five thousand dollars for a one-person household and eight thousand dollars for a household of two or more;
- g. Exclude one motor vehicle of any value in determining eligibility;
- h. Require work activities ~~as defined in section 14-08.1-05.1~~ for all household members not specifically exempted by the department of human services for reasons such as mental or physical disability of a parent or child or mental or physical incapacity of a parent;
- i. Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies and establish numerical goals for reducing the illegitimacy rate for the state for periods through calendar year 2005;
- j. ~~Conduct a program, designed to reach state and local law enforcement officials, the education system, and relevant counseling services, which provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded in scope to include men;~~
- k. ~~Provide~~ To the extent required to allow the state to receive funds from the federal government under title IV-A, provide benefits to otherwise eligible noncitizens who are lawfully present in the United States as ~~refugees, asylees, veterans, active duty military personnel, spouses and dependents of active duty military personnel, and Cuban-Haitian entrants;~~
- l. k. Establish and enforce standards against program fraud and abuse;
- m. ~~Establish procedures to screen and identify victims of domestic violence for referral to appropriate services which are to be incorporated into the temporary assistance for needy families program assessment;~~

- ~~n.~~ l. Provide an employment placement ~~program~~ programs;
- ~~o.~~ m. ~~Implement, as soon as practicable,~~ Consider implementing an electronic fund transfer system;
- ~~p.~~ n. Consider exempting funds in individual development accounts;
- ~~q.~~ o. Determine the unemployment rate of adults living in a county that includes Indian reservation lands and a significant population of Indian individuals by using unemployment data provided by job service North Dakota;
- ~~r.~~ p. When appropriate, require household members to complete high school;
- ~~s.~~ q. ~~Exempt~~ To the extent required to allow the state to receive funds from the federal government under title IV-A, exempt single parents from required work activities ~~as defined in section 14-08.1-05.4 if the exempted parent has a child under four months of age;~~
- ~~t.~~ r. Provide for sanctions, including termination of assistance to the household, if a household member fails to cooperate with work requirements;
- ~~u.~~ s. Provide for sanctions, including termination of assistance to the household, if a household member fails, without good cause, to cooperate with child support activities;
- ~~v.~~ t. Deny assistance with respect to a minor child absent from the household for more than one calendar month, except as specifically provided by the state agency for absences;
- ~~w.~~ u. Require each household to participate in developing an individual responsibility plan and provide for sanctions, including termination of assistance to the household, if adult or minor household members age sixteen or older fail to cooperate in developing an individual responsibility plan;
- ~~x.~~ v. Provide pre-pregnancy family planning services that are to be incorporated into the temporary assistance for needy families program assessment;
- ~~y.~~ w. ~~Seek federal funding to assist in the evaluation of the program;~~
- ~~z.~~ w. Except in cases of pregnancy resulting from rape or incest, not increase the assistance amount to recognize the increase in household size when a child is born to a household member who was a recipient of assistance under this chapter during the probable month of the child's ~~probable~~ conception;
- ~~aa.~~ x. Disregard earned income as an incentive allowance for no more than twelve months;
- ~~bb.~~ y. ~~Except as otherwise may be permitted by federal law, not reduce or terminate benefits based on a refusal of an individual to work if the individual is a single custodial parent caring for a child who has~~

not attained six years of age and the individual proves a demonstrated inability to obtain needed child care because of the:

- (1) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site;
- (2) Unavailability or unsuitability of informal child care by a relative or under other arrangements; or
- (3) Unavailability of appropriate and affordable formal child care arrangements; and

ee. y. Consider, and if determined appropriate, authorize demonstration projects in defined areas which may provide benefits and services that are not identical to benefits and services provided elsewhere.

2. If the secretary of the United States department of health and human services determines that funds otherwise available for the temporary assistance for needy families program in this state must be reduced or eliminated should the department of human services administer the program in accordance with any provision of subsection 1, the department of human services shall administer the program in a manner that avoids the reduction or loss.

3. ~~If the caseload of households provided assistance exceeds projections provided to the fifty-fifth legislative assembly by the department of human services, the department of human services, subject to the approval of the legislative council, shall administer the temporary assistance for needy families program in a manner that avoids expending or committing all funds appropriated for that purpose earlier than June 30, 1999.~~

4. ~~If administratively feasible, the department may establish a program that provides for payment of assistance after performance by individuals required to engage in work activities, as defined in section 14-08.1-05.1.~~

5. ~~If the department of human services determines, subject to the approval of the legislative council, that there is insufficient worker opportunity, due to increases in the unemployment rate, to participate in work activities as defined by section 14-08.1-05.1, the department may administer the temporary assistance for needy families program in a manner different than provided in subsection 1.~~

6. 4. If the department of human services determines, subject to the approval of the legislative council, that administration of the temporary assistance for needy families program, in the manner provided by subsection 1, causes otherwise eligible individuals to become a charge upon the counties under chapter 50-01, the department may administer the program in a manner that avoids that result.

7. If projected rates of expenditures for operation of the temporary assistance for needy families program, approved by the legislative council, indicate that appropriations for that purpose will be expended or committed earlier than June 30, 1999, the department of human services shall administer the temporary assistance for needy families program in a manner that avoids that result.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 412**SENATE BILL NO. 2036**

(Legislative Council)
(Family Law Committee)

SPECIAL NEEDS ADOPTION ELIGIBILITY

AN ACT to amend and reenact section 50-09-02.2 of the North Dakota Century Code, relating to eligibility for certification as a special needs adoption.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁶ **SECTION 1. AMENDMENT.** Section 50-09-02.2 of the North Dakota Century Code is amended and reenacted as follows:

50-09-02.2. Assistance for adopted children with special needs.

Assistance provided under this chapter or chapter 50-24.1 after adoption to a child with special needs must be provided without regard to the income or resources of the adopting parents. Except as provided in this section, such assistance continues until the adopted child becomes eighteen years of age, is emancipated, or dies; the adoption is terminated; or a determination of ineligibility is made by the county agency, whichever occurs earlier. If sufficient funds are available, the county agency may continue assistance for an adopted child until the child reaches twenty-one years of age if the agency determines that the adopted child is a student regularly attending a secondary, postsecondary, or vocational school in pursuance of a course of study leading to a diploma, degree, or gainful employment. Assistance provided to an adopted child must continue regardless of the residence of the adopting parents. A state or county agency may require, as a condition of receiving assistance under this chapter or chapter 50-24.1, that the adopting parents enter into a contract or agreement regarding the type of assistance to be received; the amount of assistance; the identity of the physical, mental, or emotional condition for which medical assistance is received; or any conditions for continued receipt of assistance. A child with special needs is a child legally available for adoptive placement whose custody has been awarded to the department or a county social services board and who is ~~five~~ seven years of age or older; under eighteen years of age with a physical, emotional, or mental ~~handicap~~ disability or has been diagnosed by a licensed physician to be at high risk for such a disability; a member of a minority; or a member of a sibling group.

Approved April 8, 2003

Filed April 9, 2003

¹⁸⁶ Section 50-09-02.2 was also amended by section 87 of House Bill No. 1183, chapter 138.

CHAPTER 413

SENATE BILL NO. 2245 (Senators Fischer, Heitkamp, J. Lee) (Representatives Grande, Kasper)

CHILD SUPPORT OBLIGOR IDENTITY DISCLOSURE

AN ACT to create and enact a new section to chapter 50-09 of the North Dakota Century Code, relating to disclosure of the identity of child support obligors.

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:

Disclosure of identity of child support obligors.

1. To the extent permitted by federal law, the state agency may disclose information to the public about a parent whose location is unknown or about an obligor who owes past-due child support in an amount greater than twenty-five thousand dollars, including the person's name, last-known address, date of birth, occupation, photograph, amount of child support owed, the number and ages of the children for whom support is owed, and any other information that would assist in locating the person.
2. Prior to disclosing information about an obligor under this section, the state agency shall send to each obligor whose name will be released a notice by regular mail to the obligor's last-known address. The notice must contain the information the state agency plans to release and give the obligor thirty days to object to the accuracy of the information. The notice must state that the obligor may avoid public disclosure of the information under this section if the obligor provides the state agency with the obligor's current address and employer and makes a child support payment in an amount equal to the amount of child support the obligor is required to pay each month under section 14-09-09.30. Information regarding an obligor who owes any past-due support may be disclosed if at any time after receiving a notice under this subsection the obligor fails to make a required child support payment in an amount determined under section 14-09-09.30.
3. The state agency shall obtain the written consent of the obligee before disclosing information regarding an obligor under subsection 1.
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.

5. The state agency, its employees and agents, and any person publishing information that is disclosed under this section is immune from any civil or criminal liability resulting from the disclosure of information under this section.

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 414

HOUSE BILL NO. 1084

(Human Services Committee)

(At the request of the Department of Human Services)

FOSTER CARE LICENSE DENIAL

AN ACT to amend and reenact section 50-11-07 of the North Dakota Century Code, relating to the denial or revocation of a foster care license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-11-07 of the North Dakota Century Code is amended and reenacted as follows:

50-11-07. ~~Revocation~~ Denial or revocation of license. The department may deny or revoke the license of any facility upon proper showing of any of the following:

1. Any of the conditions set forth in section 50-11-02 as prerequisites for the issuance of the license ~~no longer~~ do not exist.
2. The application contains false or misleading material information or the applicant intentionally withheld material information.
3. The license was issued upon ~~fraudulent or untrue representations~~ false, misleading, or intentionally withheld material information.
3. ~~4.~~ 4. ~~The~~ An operator, licensee, caregiver, employee, or an agent of the facility has violated a provision of this chapter or any of the rules of the department.
4. ~~5.~~ 5. ~~The~~ An operator ~~of the facility, or a caregiver in the facility,~~ applicant, licensee, caregiver, employee, or agent of the facility has been convicted of an offense determined by the department to have a direct bearing upon the person's ability to serve the public or residents of the facility, or the department determines, following conviction of any other offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 415

HOUSE BILL NO. 1085

(Human Services Committee)

(At the request of the Department of Human Services)

CHILD CARE PROVIDER LICENSING

AN ACT to amend and reenact sections 50-11.1-04 and 50-11.1-06.2 of the North Dakota Century Code, relating to consideration of reports of child abuse or neglect in licensing or registering child care providers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-11.1-04 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-04. Application for license - Prerequisites for issuance - License granted - Term. Applications for early childhood facility licenses must be made on forms provided, in the manner prescribed, by the department. The county agency shall investigate the applicant's activities and proposed standards of care and shall make an inspection of all facilities applying for a license. The applicant for a license and the applicant's employees, and, if the license is for an occupied private residence, every person living or working in that residence, may be investigated in accordance with the rules adopted by the department to determine whether any of them has a criminal record or has had a finding of probable cause services required for child abuse or neglect filed against them. Except as otherwise provided, the department shall grant a license for the operation of an early childhood facility upon a showing that:

1. The premises to be used are in fit sanitary condition and properly equipped to provide for the health and safety for all children who may be received;
2. The persons in charge of the facility and their assistants are qualified to fulfill the duties required of them according to the provisions of this chapter and standards prescribed for their qualifications by the rules and regulations of the department;
3. The facility will be maintained according to the standards prescribed for its conduct by the rules and regulations of the department;
4. The facility has not had a previous license revoked within the one hundred eighty days prior to the date of the current application;
5. The facility has paid its license fees and any penalties assessed against the facility as required by section 50-11.1-03; and
6. The group child care or child care center facility maintains at all times during which early childhood services is provided at least one person who has received training and is currently certified in rescuer cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs that are approved by the department.

The license issued to the operator of an early childhood facility must be in force and effect for a period of not more than two years.

SECTION 2. AMENDMENT. Section 50-11.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-06.2. Carecheck registry - Child care providers - Background investigations - Fees. Placement in the carecheck registry is voluntary. To apply for placement in the carecheck registry, an in-home provider, a family child care home exempt from licensure, or a licensed early childhood services provider shall obtain two sets of that person's own fingerprints from a law enforcement agency or other local agency authorized to take fingerprints and shall request the agency to submit the fingerprints and a completed fingerprint card for each set to the division of children and family services of the department or to any division as determined appropriate by the department. If the division has no record of a determination of ~~probable cause~~ services required for child abuse or neglect, the division shall submit one set of fingerprints to the federal bureau of investigation and one set to the bureau of criminal investigation to determine if there is any criminal history record information regarding the applicant for carecheck. The results of the investigations must be forwarded to the division of children and family services of the department or to any other division as determined appropriate by the department. The applicant for placement in the carecheck registry, after satisfying requirements imposed by the department, must be placed in the carecheck registry if no relevant criminal history record information is found and no report of a determination of ~~probable cause~~ services required for child abuse or neglect filed pursuant to section 50-25.1-05.2 is found which would disqualify the person. The division may charge the applicant a fee not to exceed thirty dollars for the purpose of processing the application. The division is not subject to the fee imposed under section 12-60-16.9 when requesting criminal history record information from the bureau of criminal investigation. The division, within one hundred eighty days after July 1, 1991, shall provide, through a toll-free telephone line maintained by the department, a means to allow interested parents or guardians, employment agencies, or child care referral groups to determine if a person has met the requirements for placement in the carecheck registry. The division shall undertake a public awareness effort to explain the existence and purpose of the carecheck toll-free telephone line. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 416**HOUSE BILL NO. 1249**

(Representatives Hawken, Delmore, Meier)
(Senator Wardner)

EARLY CHILDHOOD SERVICES

AN ACT to amend and reenact subsection 2 of section 50-11.1-07 and sections 50-11.1-07.2, 50-11.1-07.8, and 50-11.1-09 of the North Dakota Century Code, relating to early childhood services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 50-11.1-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Licensees and registrants shall:
 - a. Maintain such records as the department may prescribe regarding each child in their care and control, and shall report to the department, when requested, such facts as the department may require with reference to the children upon forms furnished by the department; ~~and~~
 - b. Admit for inspection authorized agents of the department or the county agency and open for examination all records, books, and reports of the home or facility; and
 - c. Notify the parent, guardian, or custodian of each child receiving care at the facility and each employee of the facility of the process for reporting a complaint or a suspected licensing violation.

SECTION 2. AMENDMENT. Section 50-11.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.2. Correction orders.

1. Whenever the county agency finds, upon inspection of an early childhood facility, that the facility is not in compliance with the provisions of this chapter, or the rules and regulations promulgated thereunder, a correction order must be issued to the facility. The correction order must cite the specific statute or regulation violated, state the factual basis of the violation, state the suggested method of correction, and specify the time allowed for correction. The correction order must also specify the amount of any fiscal sanction to be assessed if the correction order is not complied with in a timely fashion. The department shall, by rule promulgated pursuant to subsection 2 of section 50-11.1-08, establish a schedule of allowable time periods for correction of deficiencies.
2. Within three business days of the receipt of the correction order, the licensee of the early childhood facility shall notify the parent, guardian, or custodian of each child receiving care at the facility that a correction order has been issued. In addition to providing notice to the parent,

guardian, or custodian of each child, the licensee shall post the correction order in a conspicuous location within the facility until the violation has been corrected.

SECTION 3. AMENDMENT. Section 50-11.1-07.8 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-07.8. Suspension of license - Notification to parent, guardian, or custodian. The department may suspend the license of any early childhood facility during an investigation of a report of child abuse or neglect at the facility conducted pursuant to section 50-25.1-05. Notwithstanding sections 50-11.1-07 and 50-25.1-11, the department ~~may~~ shall notify the parent, guardian, or custodian of any child receiving care at the facility when the license of the facility is suspended. Upon the conclusion and disposition of the investigation of the facility, the department ~~may~~ shall notify the parent, guardian, or custodian of the child of the disposition.

SECTION 4. AMENDMENT. Section 50-11.1-09 of the North Dakota Century Code is amended and reenacted as follows:

50-11.1-09. Revocation of license or registration document.

1. The department may revoke the license of any early childhood facility or the registration document of any in-home provider upon proper showing of any of the following:
 - 1- a. Any of the applicable conditions set forth in section 50-11.1-04 as prerequisites for the issuance of the license no longer exist.
 - 2- b. The licensee or registrant is no longer in compliance with the minimum standards prescribed by the department.
 - 3- c. The license or registration document was issued upon fraudulent or untrue representation.
 - 4- d. The licensee or registrant has violated any rules of the department.
 - 5- e. The licensee or registrant has been guilty of an offense determined by the department to have a direct bearing upon a person's ability to serve the public as a licensee or registrant.
 - 6- f. The licensee has been convicted of any offense and the department, acting pursuant to section 12.1-33-02.1, has determined that the licensee has not been sufficiently rehabilitated.
2. The department shall notify, in writing, the parent, guardian, or custodian of each child receiving care in the facility of the issuance of a revocation notice.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 417

HOUSE BILL NO. 1037

(Legislative Council)
(Family Law Committee)

CHILD-PLACING AGENCY AND ADOPTION LICENSING AND REGULATION

AN ACT to amend and reenact sections 50-12-01, 50-12-02, and 50-12-03, subsection 1 of section 50-12-03.2, subsection 3 of section 50-12-04, sections 50-12-06, 50-12-07, and 50-12-08, subsection 1 of section 50-12-10, and sections 50-12-12, 50-12-14.1, and 50-12-17 of the North Dakota Century Code, relating to licensure of child-placing agencies and registration of adoption placement facilitators; to repeal section 50-12-13 of the North Dakota Century Code, relating to child-placing agency licensure appeals; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-12-01 of the North Dakota Century Code is amended and reenacted as follows:

50-12-01. ~~Child-placing agency~~ Definitions. The term "~~child-placing agency~~" when As used in this chapter, unless the context or subject matter otherwise requires;

1. "Child-placing agency" means any person, ~~partnership, voluntary association, corporation, or limited liability company~~ undertaking to place children in family homes for temporary or permanent care.
2. "Placement" means the transfer of physical custody of a child from a birth parent for foster or adoptive care until an adoption is finalized.

SECTION 2. AMENDMENT. Section 50-12-02 of the North Dakota Century Code is amended and reenacted as follows:

50-12-02. ~~Child-placing agency licensed.~~ Every child-placing agency shall secure a license ~~annually~~ from the department of human services.

¹⁸⁷ **SECTION 3. AMENDMENT.** Section 50-12-03 of the North Dakota Century Code is amended and reenacted as follows:

50-12-03. Requirements for license - Term. ~~Licenses~~ The department of human services shall issue licenses for the conduct of child-placing agencies ~~must be issued by the department of human services upon application and.~~ Licenses must be granted for a period not exceeding ~~one year~~ two years. ~~Such licenses~~ Licenses must be issued to reputable and responsible applicants upon a showing

¹⁸⁷ Section 50-12-03 was also amended by section 1 of Senate Bill No. 2188, chapter 418.

that they, and their agents, are equipped properly by training and experience to find and select suitable temporary or permanent homes for children and to supervise ~~such~~ the homes when children are placed in them, to the end that the health, morality, and general well-being of children placed by them will be properly safeguarded.

SECTION 4. AMENDMENT. Subsection 1 of section 50-12-03.2 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 5. AMENDMENT. Subsection 3 of section 50-12-04 of the North Dakota Century Code is amended and reenacted as follows:

3. Whether the licensee is authorized to find ~~temporary~~ foster or ~~permanent~~ adoptive homes for children, or both.

SECTION 6. AMENDMENT. Section 50-12-06 of the North Dakota Century Code is amended and reenacted as follows:

50-12-06. Placement contract. Every child-placing agency upon placing a child in a foster ~~or an adoptive~~ home shall enter ~~into~~ a written agreement with the persons taking the child ~~which~~. The agreement must provide:

1. The placing agency ~~shall have~~ has access at all reasonable times to such child and to the home in which the child is living; and
2. For the return of the child to the placing agency whenever in the opinion of ~~such~~ the agency, or of the department of human services, the best interests of the child ~~shall~~ require the return.

SECTION 7. AMENDMENT. Section 50-12-07 of the North Dakota Century Code is amended and reenacted as follows:

50-12-07. Duties of licensee. Every licensee shall:

1. Keep a full record and social history of each child received for placement and a similar record and history of his family.
2. Report to the department of human services:
 - a. The name and address of each child to be placed in a ~~permanent~~ foster or an adoptive home-;
 - b. The name and address of the proposed foster or adoptive parents-; and

- c. ~~Such~~ Any other facts and information as ~~shall be~~ requested by the department.
3. Visit the proposed foster or adoptive home at frequent intervals and make all necessary inquiries and investigations as may be necessary to determine whether the child will become properly adjusted in ~~said~~ the home.
 4. Continue to visit and supervise each placement as often as may be required by the department and report in writing to the department the conditions as ascertained by ~~such~~ a visit.

SECTION 8. AMENDMENT. Section 50-12-08 of the North Dakota Century Code is amended and reenacted as follows:

50-12-08. Child must be placed in suitable home - Department may remove child. A child may not be placed in any foster or adoptive home until adequate investigation has been made as to the suitability of the proposed foster or adoptive parents and their home surroundings. ~~Whenever~~ When the department of human services is satisfied that a child has been placed in an unsuitable home ~~it, the~~ department shall order the child-placing agency, in writing, to remove the child and place ~~it~~ the child in a home ~~which that~~ which meets ~~with~~ the approval of the department. If within a reasonable period of time it appears that suitable arrangements have not been made for the care of the child, the department shall refer the child to the county social service board of the county in which the child has legal settlement. The county social service board shall make immediate arrangements, subject to the approval of the department, for the care and support of the child. If the child has no legal settlement within the state, or in case of a dispute as to the determination of the child's legal settlement or responsibility for the child's support, the child must be brought before the juvenile court as a dependent child in the county in which the child is found, as provided by law.

SECTION 9. AMENDMENT. Subsection 1 of section 50-12-10 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Any of the conditions set forth in section 50-12-03 as prerequisites for the issuance of the license no longer exist.~~ The licensee has violated any requirements under this chapter.

SECTION 10. AMENDMENT. Section 50-12-12 of the North Dakota Century Code is amended and reenacted as follows:

50-12-12. Denial or revocation of license - Hearing. Before any application for a license to conduct a child-placing agency under this chapter may be denied, or before the revocation of any ~~such~~ license may take place, written charges as to the reasons therefor must be served upon the applicant or licensee. ~~Such~~ The applicant or licensee has the right to a an administrative hearing before the department of human services, if such a hearing is requested, within thirty days after service of the written charges as provided under chapter 28-32 if written request for the hearing is made to the department within thirty days after service of the written charges.

SECTION 11. AMENDMENT. Section 50-12-14.1 of the North Dakota Century Code is amended and reenacted as follows:

50-12-14.1. Conditions for placement of children in state - Consent of department required. Any person, ~~partnership, association, corporation, limited liability company, charitable agency, or other entity~~ undertaking to bring or to send a child into this state for placement in foster care ~~or~~, as a preliminary to a possible adoption, or for guardianship shall furnish the department of human services with written notice of the intention to send, bring, or place the child in the state and shall obtain prior written consent from the department for each child to be so placed. The notice must contain:

1. The name, date, and place of birth of the child-;
2. The identity and address or addresses of the parent or legal guardian-;
3. The name and address of the person, agency, or institution to or with which the child is proposed to be placed-;
4. A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made-; and
5. ~~Such~~ Any supporting or additional information as the department ~~may deem~~ determines necessary under the circumstances.

This section does not apply to the sending or bringing of a child into this state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or the child's guardian and leaving the child with any such relative or nonagency guardian in this state.

SECTION 12. AMENDMENT. Section 50-12-17 of the North Dakota Century Code is amended and reenacted as follows:

50-12-17. Licensure requirement - Registration requirement - Penalty. ~~No~~ A person may not place or cause to be placed any child in a family home for adoption without a license ~~so~~ to do so from the department of human services except that a parent, upon giving written notice to the department, may place ~~his or her own~~ the parent's child in the home of the child's parent, stepparent, grandparent, adult brother or sister, adult uncle, or aunt, or guardian for adoption by the person receiving the child. The child must be considered abandoned if proceedings for the adoption or guardianship of the child are not initiated by such relative within one year following the date of notice of placement. ~~Every~~ A person who willfully violates ~~any provision in~~ this chapter is guilty of a class C felony. For purposes of this section, "to place or cause to be placed" means to place a child for adoption; arrange or provide for short-term foster care for a child pending an adoptive placement; facilitate placement of a child by maintaining a list in any form of birth parents or prospective adoptive parents; or advertise in any public medium that the person knows of a child who is available for adoption or is willing to accept a child for adoption or that the person knows of prospective adoptive parents of a child.

SECTION 13. REPEAL. Section 50-12-13 of the North Dakota Century Code is repealed.

CHAPTER 418**SENATE BILL NO. 2188**

(Senators Klein, Dever, Robinson)
(Representatives Grande, Pollert, Weisz)

CHILD-PLACING AGENCY LICENSING

AN ACT to create and enact a new section to chapter 50-12 of the North Dakota Century Code, relating to moral or religious objections by a child-placing agency; and to amend and reenact section 50-12-03 of the North Dakota Century Code, relating to licensure of child-placing agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁸ **SECTION 1. AMENDMENT.** Section 50-12-03 of the North Dakota Century Code is amended and reenacted as follows:

50-12-03. Requirements for license - Term - Moral or religious conviction not bar to licensure. Licenses for the conduct of child-placing agencies must be issued by the department of human services upon application and must be granted for a period not exceeding one year. Such licenses must be issued to reputable and responsible applicants upon a showing that they, and their agents, are equipped properly by training and experience to find and select suitable temporary or permanent homes for children and to supervise such homes when children are placed in them, to the end that the health, morality, and general well-being of children placed by them will be properly safeguarded. The department of human services may not deny a license because of the applicant's objection to performing, assisting, counseling, recommending, facilitating, referring, or participating in a placement that violates the applicant's written religious or moral convictions or policies.

SECTION 2. A new section to chapter 50-12 of the North Dakota Century Code is created and enacted as follows:

¹⁸⁸ Section 50-12-03 was also amended by section 3 of House Bill No. 1037, chapter 417.

Objection to placement for religious or moral convictions or policies -

Effect. A child-placing agency is not required to perform, assist, counsel, recommend, facilitate, refer, or participate in a placement that violates the agency's written religious or moral convictions or policies. A state or local government entity may not deny a child-placing agency any grant, contract, or participation in a government program because of the child-placing agency's objection to performing, assisting, counseling, recommending, facilitating, referring, or participating in a placement that violates the child-placing agency's written religious or moral convictions or policies. Refusal by a child-placing agency to perform, assist, counsel, recommend, facilitate, refer, or participate in a placement that violates the child-placing agency's written religious or moral convictions or policies does not constitute a determination that the proposed adoption is not in the best interest of the minor.

Approved April 23, 2003

Filed April 23, 2003

CHAPTER 419

SENATE BILL NO. 2341

(Senators Esegard, G. Lee)
(Representative Grande)

CHARITABLE SOLICITATIONS

AN ACT to create and enact sections 50-22-06 and 50-22-07 of the North Dakota Century Code, relating to charitable solicitations; to amend and reenact sections 50-22-01, 50-22-02, 50-22-02.1, 50-22-04, 50-22-04.3, and 50-22-05 of the North Dakota Century Code, relating to charitable solicitations; and to repeal section 50-22-04.2 of the North Dakota Century Code, relating to charitable solicitations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-22-01 of the North Dakota Century Code is amended and reenacted as follows:

50-22-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Accounting year" means the twelve-month period on which a charitable organization keeps its financial records.
4. 2. a. "Charitable organization" means ~~any entity that:~~
 - (1) ~~is deemed by the internal revenue service to be a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)]; or~~
 - (2) ~~holds itself out to the public to be established for any charitable purpose; or~~
 - (3) ~~in any manner employs a charitable appeal as the basis for any solicitation~~ a person that engages in or purports to engage in solicitation for a charitable purpose and includes a chapter, branch, area office, or similar affiliate or a person soliciting contributions within the state for a parent charitable organization.
- b. The term "charitable organization" does not include:
 - (1) An organization ~~soliciting that solicits~~ funds for an institution of higher learning.
 - (2) An organization ~~using that uses~~ only volunteer unpaid fundraisers and ~~soliciting that solicits~~ funds for a political subdivision or other government entity or for a civic or community project in which the contributions received are used solely for the project and none of the contributions inure to the benefit of any individual.

- (3) A private or public elementary or secondary school.
 - (4) A charitable organization or person ~~soliciting~~ that solicits contributions for any person specified by name at the time of the solicitation if all the contributions received are transferred within a reasonable time after receipt to the person named or that person's parent, guardian, or conservator with no restriction on their expenditure and with no deduction.
 - (5) ~~A duly constituted religious organization or any group affiliated with and forming an integral part of that organization no part of the net income of which inures to the direct benefit of any individual and which has received a declaration of current tax-exempt status from the government of the United States; provided, that no such affiliated group may be required to obtain the declaration if the parent or principal organization has obtained the declaration. A religious society or organization that is exempt from filing a federal annual information return pursuant to Internal Revenue Code section 6033(a)(2)(A)(i) and (iii) [26 U.S.C. 6033(a)(2)(A)(i) and (iii)] and Internal Revenue Code section 6033(a)(2)(C)(i) [26 U.S.C. 6033(a)(2)(C)(i)].~~
 - (6) Any candidate for national, state, or local elective office or political party or other committee required to file information with the federal election commission, a state election commission, or an equivalent office or agency.
3. "Charitable purpose" means a charitable, benevolent, philanthropic, religious, social service, welfare, educational, cultural, artistic, or public interest purpose, either actual or purported.
 2. 4. "Contribution" means cash or the promise, grant, or pledge of any money, credit, assistance, or property of any kind or value, including the promise to pay, provided in response to a solicitation. "Contribution" includes, in the case of a charitable organization offering goods and services to the public, the difference between the direct cost of the goods and services to the charitable organization and the price at which the charitable organization or a person acting on behalf of that organization resells those goods or services to the public. "Contribution" does not include bona fide fees, dues, or assessments paid by members of an organization, provided that:
 - a. Membership is not conferred in exchange for a contribution in response to a solicitation; or
 - b. Membership provides no benefit in addition to the right to vote or otherwise participate in the organization and the right to receive literature.
 3. 5. "Person" means any individual, organization, association, partnership, corporation, or limited liability company.
 4. "Professional fundraiser" means any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on,

advises, or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of, any charitable organization but who actually solicits no contributions as a part of such services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state shall not be deemed to be a professional fundraiser.

5. 6. "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of, a charitable organization whether such solicitation is performed personally or through the person's agents, servants, or employees or through agents, servants, or employees specially employed by, or for, a charitable organization, who are engaged in the solicitation of contributions under the direction of such person, or a person who plans, conducts, manages, carries on, advises, or acts as a consultant, whether directly or indirectly, to a charitable organization in connection with the solicitation of contributions but does not qualify as a professional fundraiser within the meaning of this chapter fundraiser" means a person who, for financial compensation or profit, performs for a charitable organization a service in connection with which contributions are, or will be, solicited in this state by the compensated person or by a compensated person the person employs, procures, or engages to solicit; or a person who for compensation or profit plans, manages, advises, consults, or prepares material for, or with respect to, the solicitation in this state of contributions for a charitable organization. A bona fide full-time salaried officer or employee of a charitable organization maintaining a permanent establishment within the state may not be deemed to be a professional ~~solicitor~~ fundraiser.

An attorney, investment counselor, or banker who advises any person to make a contribution to a charitable organization may not be deemed, as the result of that advice, to be a professional fundraiser ~~or a professional solicitor~~.

6. 7. "Solicitation" ~~means~~ and "solicit" ~~mean the~~ request to the public or member of the public for a contribution on the representation that the contribution will be used in whole or in part for a charitable purpose, including:
- a. An oral request made in person or by telephone, radio, television, electronic communication including the internet, or other advertising or communication media;
 - b. A written or other recorded or published request, that is mailed, sent, delivered, circulated, distributed, posted in a public place, or advertised or communicated through any medium available to the public and described in subdivision a;
 - c. A sale of or attempt to sell any good or service in which the good or service is priced above fair market value or when it is otherwise represented that some portion of the purchase price will be used for a charitable purpose; or
 - d. An announcement inviting the public to attend an assembly, event, exhibition, performance, or social gathering of any kind where

admission is conditioned on the receipt of a contribution or at which function contributions will be otherwise solicited.

A solicitation is deemed to have occurred regardless of whether the party solicited makes a contribution.

SECTION 2. AMENDMENT. Section 50-22-02 of the North Dakota Century Code is amended and reenacted as follows:

50-22-02. License to solicit - Term - Revocation Registration of charitable organization.

1. A charitable organization may not solicit contributions from persons in this state by any means ~~without first having obtained a license from the secretary of state. The application for a license must contain the information concerning the solicitation as required by this chapter. This information must be filed with the secretary of state and must be available as a matter of public record. The application form containing the information must be sworn to and must include the following:~~
1. The name of the charitable organization for which the solicitation is to be conducted.
2. The organization's address.
3. The purpose or purposes for which the contributions solicited are to be used.
4. The individual or officer who will have custody of the contributions.
5. The individual or officer responsible for the distribution of contributions received.
6. The period of time during which solicitation is to be conducted.
7. A description of the methods of solicitation in such detail as may be determined by the secretary of state.
8. Whether the solicitation is to be conducted by voluntary unpaid or paid solicitors, or both, and if in whole or part by paid solicitors, the name and address of each professional fundraiser supplying the solicitors, the basis of payment, and the nature of the agreement.
9. Any additional information deemed necessary by the secretary of state.

The secretary of state shall investigate the financial responsibility, experience, character, and general fitness of the applicant. If the investigation indicates the applicant will conduct solicitations in accordance with the law, the secretary of state shall issue a license to the applicant, giving the applicant the right to solicit within the state until September first of that year except that an initial license issued to a charitable organization in July or August following the close of the annual reporting period described in section 50-22-04 must be valid until September first of the subsequent year. If the secretary of state finds the applicant is not qualified to be issued a license, the secretary of state shall deny the application, forthwith notify the applicant of the denial, but retain the license fee. If the applicant does not fulfill the requirements for an application within ninety days of the initial date of application, the

~~application is deemed denied and the secretary of state shall file the documentation and retain any fee received. An applicant whose application is denied for failure to complete within the ninety-day time period shall submit a new application and license fee. All fees collected under this chapter must be credited to the state general fund. The fee for an initial license is twenty-five dollars. A license obtained under this section is valid for no more than fourteen months the first year a license is obtained and one year thereafter, and is subject to revocation by the secretary of state at any time for just cause.~~

unless, prior to a solicitation, there is on file with the secretary of state upon forms prescribed by the secretary of state a registration statement containing the following information:

- a. Legally established name.
 - b. Name or names under which it solicits contributions.
 - c. Form of organization.
 - d. Date and place of organization.
 - e. Business telephone number.
 - f. Street and mailing address of principal office in this state, if any.
 - g. Name and address of the person having custody of books and records within this state.
 - h. Total compensation, including salaries, fees, bonuses, fringe benefits, severance payments, and deferred compensation, paid to employees by the charitable organization and all its affiliated organizations.
 - i. Federal and state tax-exempt status.
 - j. Denial at any time by any governmental agency or court of the right to solicit contributions.
 - k. Date on which accounting year of the charitable organization ends.
 - l. General purposes for which organized.
 - m. General purposes for which contributions to be solicited will be used.
 - n. Methods by which solicitation will be made.
 - o. Board, group, or individual having final discretion or authority as to the distribution and use of contributions received.
 - p. Amount of total contributions received during the accounting year last ended.
2. The registration statement filed by a charitable organization must include a registration fee of twenty-five dollars and a financial statement of the organization's operation for its most recent twelve-month period

immediately preceding the filing of the first registration statement. The registration continues unless revoked by a court of competent jurisdiction, by the secretary of state, or as provided in this chapter. If a charitable organization fails to file a registration statement or other information required to be filed by the secretary of state under this chapter, or otherwise violates this chapter, the secretary of state, upon notice by certified mail to its last-known address, may deny or suspend the application for registration. An adjudicative proceeding under this chapter must be conducted in accordance with chapter 28-32 unless otherwise provided in this chapter. A notice required under this chapter or chapter 28-32 may be made by certified mail. In the event of revocation, the secretary of state still shall retain the registration fee.

3. An officer of the charitable organization must execute the registration statement and must acknowledge that the registration statement has been executed pursuant to resolution of the board of directors or trustees, or if there be no such board, then by its managing group which has approved the content of the registration statement. The executing officer also must certify that the board of directors or trustees, or if there be no such board, its managing group, have assumed, and will continue to assume, responsibility for determining matters of policy and have supervised, and will continue to supervise, the finances of the charitable organization.
4. If a chapter, branch, area office, or similar affiliate of a charitable organization is supervised and controlled by a parent organization located within or outside the state, the affiliate may file a registration statement on behalf of the parent organization in addition to or as part of its own registration statement or the parent organization may file a registration statement on behalf of the affiliate in addition to or as part of its own registration statement.

SECTION 3. AMENDMENT. Section 50-22-02.1 of the North Dakota Century Code is amended and reenacted as follows:

50-22-02.1. Registration of professional fundraiser and solicitor - Bond required. ~~The secretary of state or the secretary's designee shall examine each initial application of charitable organizations for the right to solicit funds.~~

1. A person may not act as a professional fundraiser ~~or solicitor~~ subject to this chapter unless that person has registered with the secretary of state. The ~~application for~~ registration statement must be in writing, under oath, in the form prescribed by the secretary of state and must be accompanied by ~~an annual~~ a fee of one hundred dollars. ~~This~~ The registration information must be available to the public as a matter of public record. Each registration expires on September first unless, prior to September first, the public fundraiser registers by filing a new registration statement, accompanied by a fee of one hundred dollars. The forms containing the information must be ~~sworn to~~ verified under oath and must include the following:
4. a. The name of the professional fundraiser ~~or solicitor~~.
2. b. The street and mailing address and telephone number of the professional fundraiser ~~or solicitor~~.

- ~~3.~~ c. The type of fundraising to be conducted in this state.
4. d. The name of the auditor ~~in charge of~~, accountant, employee, agent or other person who maintains or possesses the organization's professional fundraiser's records.
- ~~5.~~ e. A list of all officers, agents, or employees to work under the applicant's direction.
- ~~6.~~ f. A list of all licensed charitable organizations with which the applicant has contracts within this state.

If the solicitation is to be made in whole or in part by a professional fundraiser or solicitor, the secretary of state shall approve registration if the arrangement for payment conforms to the requirements of this chapter and all relevant rules. The registration of a professional fundraiser grants the right to solicit funds within the state for charitable organizations until September first of that year. Any applicant who is denied registration may, within fifteen days from the date of notification of denial, request in writing a hearing before the secretary of state. The hearing must be held within fifteen days from the date of the request.

No person may act as a professional fundraiser or solicitor for a charitable organization subject to this chapter unless that person first has registered with the secretary of state. An application for registration must be in writing, under oath or affirmation in the form prescribed by the secretary of state, and must contain any information the secretary of state may require. The application for registration by a professional fundraiser or solicitor must be accompanied by an annual fee in the sum of one hundred dollars. A partnership, corporation, or limited liability company that is a professional fundraiser or solicitor may register for and pay a single fee on behalf of all its members, officers, agents, and employees. However, the names and addresses of all officers, agents, and employees employed to work under the direction of a professional solicitor or fundraiser must be listed in the application.

2. The professional fundraiser shall also include, as part of the registration statement, a bond in which the professional fundraiser is the principal obligor. The bond must be in the sum of twenty thousand dollars, with one or more responsible sureties whose liability in the aggregate as the sureties will at least equal that sum. In order to maintain the registration, the bond must be in effect for the full term of the registration. The bond, which may be in the form of a rider to a larger blanket liability bond, must run to the state and to any person who may have a cause of action against the principal obligor of the bond for any liabilities resulting from the obligor's conduct of any activities subject to this chapter.
3. The professional fundraiser shall also include, as part of the registration statement, a copy of the contract between any charitable organization and the professional fundraiser. The contract must:
 - a. Be in writing;
 - b. Contain information that will enable the secretary of state to identify the services the professional fundraiser is to provide, including whether the professional fundraiser will at any time have custody of contributions; and

- c. Be submitted within ten days of the date of execution.
4. A parent organization filing on behalf of one or more chapters, branches, or affiliates and a federated fundraising organization filing on behalf of its member agencies shall pay a single annual registration fee for itself and the chapters, branches, affiliates, or member agencies included in the registration statement. If any ~~charitable organization, professional fundraiser, or solicitor~~ fails to file any registration ~~application~~ statement or other information required to be filed by the secretary of state under this chapter or otherwise violates this chapter, the secretary of state, upon notice by certified mail to its last-known address, may deny or suspend the application for registration if ~~the information is not filed or if the existing violation is not discontinued within two weeks after the formal notification or receipt of such notice.~~ All civil. Any adjudicative proceedings under this chapter must be conducted in accordance with chapter 28-32 unless otherwise specifically herein provided. Any notice required under this chapter or chapter 28-32 may be made by certified mail.
5. A professional fundraiser may not solicit on behalf of a charitable organization that is not registered.

SECTION 4. AMENDMENT. Section 50-22-04 of the North Dakota Century Code is amended and reenacted as follows:

50-22-04. Information required to be filed annually.

1. ~~Every charitable organization licensed in this state, whether or not the organization is reapplying for a license to solicit for the upcoming year, that is required to file or that files a registration statement pursuant to section 50-22-02 shall file an annual report along with a ten dollar fee with the secretary of state on or before September first of each year. The report must be postmarked by the United States postal service or other carrier, in a properly addressed, postage prepaid, sealed envelope.~~

The secretary of state may extend the filing date for the annual report of any charitable organization, if a written application for extension is received before the filing deadline. A charitable organization with a fiscal year ending within three months prior to the filing deadline may make a written request for an extension to apply to reports for subsequent years until the fiscal year is changed.

Information submitted must be given as of the close of the business on the thirty-first day of December next preceding the date herein provided for the filing of the report, or, in the alternative, the date of the end of the fiscal year next preceding this report may be used.

2. The annual report must be filed on forms ~~provided~~ prescribed by the secretary of state ~~containing the following information:~~
4. ~~Specific and itemized support and revenue statements disclosing direct public support in this state from solicitation, indirect public support, government grants, program service revenue, and any other revenue.~~
2. ~~The amount thereof given to the charitable purpose represented.~~

3. ~~Specific and itemized expense statements disclosing program services, public information expenditures, payments to affiliates, management costs, and salaries paid in this state.~~
4. ~~The aggregate amount paid to or received and to be paid to or received by professional fundraisers and solicitors.~~

~~In addition, the and must include a financial statement covering the immediately preceding twelve-month period of operation. An officer of the charitable organization shall execute the financial statement which must include a balance sheet, statement of income and expense, and statement of functional expenses. The financial statement must be filed on or attached to forms furnished by the secretary of state and must be prepared in accordance with generally accepted accounting principles so as to make a full disclosure of the following, including necessary allocations between each item and the basis of the allocations:~~

- a. Total receipts and total income from all sources;
 - b. Cost of management and general;
 - c. Program services;
 - d. Cost of fundraising;
 - e. Cost of public education;
 - f. Funds or properties transferred out of state with explanation as to recipient and purpose;
 - g. Total net amount disbursed or dedicated within this state, broken down into total amounts disbursed or dedicated for each major purpose, charitable or otherwise;
 - h. Names of professional fundraisers used during the accounting year and the financial compensation and profit resulting to each professional fundraiser; and
 - i. Total compensation, including salaries, fees, bonuses, fringe benefits, severance payments, and deferred compensation, paid to employees by the charitable organization and all its affiliated organizations.
3. Unless otherwise required by this section, the financial statement need not be certified.
 4. The annual report must include a copy of all tax or information returns, including all schedules and amendments, submitted by the charitable organization to the internal revenue service for the period covered by the annual report, except any schedules of contributors to the organization.
 5. The secretary of state may make a detailed examination of the accounts of any charitable organization conducting a solicitation for funds within this state. Upon request the attorney general shall may assist the secretary of state in carrying out this chapter and, for this purpose, has

~~all powers granted by this chapter to the secretary of state.~~ Every charitable organization subject to this chapter shall keep a full and true record in the form that will enable the charitable organization to accurately provide the information required by this chapter. The registration of a charitable organization is ineffective immediately upon its failure to file an annual report, including the payment of all required fees. Any such organization, if in default under this chapter, may not file a new registration statement until it files the required annual report with the secretary of state.

Failure to file the annual report and fee as required will mean ~~the organization's registration will no longer be in effect and~~ the organization may not solicit in this state.

SECTION 5. AMENDMENT. Section 50-22-04.3 of the North Dakota Century Code is amended and reenacted as follows:

50-22-04.3. Fraud - Misrepresentation. ~~No~~ A charitable organization, professional fundraiser, ~~or professional solicitor,~~ or any agent or employee of a charitable organization, ~~or professional fundraiser, or professional solicitor~~ may not use any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation with the intent that others rely thereon in connection with the solicitation of a contribution for or on behalf of a charitable organization.

SECTION 6. AMENDMENT. Section 50-22-05 of the North Dakota Century Code is amended and reenacted as follows:

50-22-05. Enforcement - Penalties - Remedies. Any person conducting a solicitation in violation of this chapter, or failing to properly complete and file any report required under this chapter, is guilty of a class A misdemeanor. ~~Any person who commences or continues fundraising or soliciting after the person's application is denied or the license or registration under this chapter is revoked or has lapsed is guilty of a class C felony. In addition to any criminal penalties, the secretary of state may deny the person the right to engage in future fundraising activities. Any person conducting a solicitation after the person's registration is revoked is guilty of a class C felony. The criminal penalties in this section are in addition to all other causes of action, remedies, and penalties available to the state.~~

Whenever the attorney general or any state's attorney has reason to believe or is advised by the secretary of state that the ~~fundraiser,~~ charitable organization, or professional ~~solicitor~~ fundraiser is operating in violation of this chapter, the attorney general or state's attorney may bring an action in the name of the state against the charitable organization and its officers, the professional fundraiser ~~or solicitor,~~ or any other person who has violated this chapter or who has participated or is about to participate in any solicitation or collection by employing any device, scheme, artifice, false representation or promise, to defraud or obtain money or other property, to enjoin the charitable organization or professional fundraiser ~~or solicitor~~ or other person from continuing the violation, solicitation, or collection, or engaging therein, or doing any acts in furtherance thereof and for any other relief the court determines appropriate, including the imposition of civil penalties in the amount of up to five thousand dollars per violation of this chapter and the denial of ~~licensure or~~ registration under this chapter for a period of up to five years. The attorney general, in enforcing this chapter, has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or 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 in chapter 51-15, or otherwise provided by law.

SECTION 7. Section 50-22-06 of the North Dakota Century Code is created and enacted as follows:

50-22-06. Costs recoverable in court proceeding. The attorney general is entitled to an award of reasonable attorney's fees, costs, and expenses of an investigation and action brought under this chapter.

SECTION 8. Section 50-22-07 of the North Dakota Century Code is created and enacted as follows:

50-22-07. Rules. The secretary of state may adopt rules the secretary of state deems necessary and appropriate to fully implement the provisions of this chapter in accordance with chapter 28-32, but which need not comply with section 28-32-07.

SECTION 9. REPEAL. Section 50-22-04.2 of the North Dakota Century Code is repealed.

Approved March 20, 2003

Filed March 20, 2003

CHAPTER 420

HOUSE BILL NO. 1469

(Representatives Weisz, Price)
(Senator Fischer)

MEDICAL ASSISTANCE ELIGIBILITY

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to eligibility for medical assistance; and to amend and reenact section 50-24.1-02.5 of the North Dakota Century Code, relating to eligibility for medical assistance.

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.

SECTION 2. A new section to chapter 50-24.1 of the North Dakota Century Code is created and enacted as follows:

Department to submit plans and seek waivers.

1. Unless a waiver under subsection 2 is required, the department of human services shall submit amendments to the state plan for medical assistance to provide for a sixty-month look-back period for assignments or transfers of property which disqualify the applicant or the applicant's spouse from the receipt of long-term care services.
2. If the state plan amendment provided for in subsection 1 is or will be denied, the department of human services shall seek a waiver of federal law to provide for a sixty-month look-back period for assignments or transfers of property which disqualify the applicant or the applicant's spouse from the receipt of long-term care services.

3. Unless the amendment to the state plan or the request for waiver would otherwise be denied, the requirements of this section apply only to transfers that occur on or after the effective date of the state plan amendment or waiver.

Approved April 21, 2003
Filed April 22, 2003

CHAPTER 421

SENATE BILL NO. 2074

(Human Services Committee)

(At the request of the Office of Management and Budget)

MEDICAL ASSISTANCE BENEFIT ELIGIBILITY

AN ACT to amend and reenact section 50-24.1-02.6 of the North Dakota Century Code, relating to eligibility criteria for medical assistance benefits; to repeal section 5 of chapter 425 of the 2001 Session Laws; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-02.6 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-02.6. (Contingent effective date - See note) Medical assistance benefits - Eligibility criteria:

1. The department shall provide medical assistance benefits to otherwise eligible persons who are:
 - a. Medically needy persons who have countable income that does not exceed an amount determined under subsection 2; and
 - b. Minors who have countable income that does not exceed an amount determined under subsection 3.
2. The department of human services shall establish an income level for medically needy persons at an amount, no less than required by federal law, that, consistent with the requirements of subsection 3, is the greatest income level achievable without exceeding legislative appropriations for that purpose.
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, equal to one hundred 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.

(Contingent effective date and effective through June 30, 2003 - See note) Medical assistance benefits - Eligibility criteria.

1. The department shall provide medical assistance benefits to otherwise eligible persons who are:
 - a. Medically needy persons who have countable income that does not exceed an amount determined under subsection 2; and

- b. Minors who have countable income that does not exceed an amount determined under subsection 3.
2. The department of human services shall establish an income level for medically needy persons at an amount, no less than required by federal law, that, consistent with the requirements of subsection 3, is the greatest income level achievable without exceeding legislative appropriations for that purpose.
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, equal to one hundred 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.
4. The department of human services shall provide medical assistance benefits to children and families coverage groups and pregnant women without consideration of assets.

SECTION 2. REPEAL. Section 5 of chapter 425 of the 2001 Session Laws is repealed.

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

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 422**SENATE BILL NO. 2194**

(Senator J. Lee)
(Representative Price)

MEDICAL ASSISTANCE BUY-IN AND PERSONAL CARE

AN ACT to provide for the establishment of a medical assistance buy-in program for individuals with disabilities and to provide for personal care services for eligible medical assistance recipients; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Medical assistance buy-in program for disabled. The department of human services shall establish and implement a buy-in program to provide medical assistance to an individual who meets the definition of disabled under the supplemental security income program under title XVI of the federal Social Security Act, who is at least eighteen but less than sixty-five years of age, and who is gainfully employed. The program must:

1. Be made available to an individual with a disability who is a member of a family the total annual income of which is less than two hundred twenty-five percent of the most recently revised official poverty line published by the federal office of management and budget for the family;
2. Disregard up to an additional ten thousand dollars earned while an eligible individual is enrolled in medical assistance and retained as an approved plan to achieve self-support;
3. Require the payment of a premium that is based upon a sliding scale which may not be less than two and one-half percent nor more than seven and one-half percent of the individual's income;
4. Include a one-time program enrollment fee of one hundred dollars; and
5. Provide that the failure of an enrolled individual to pay premiums for three consecutive months may result in the termination of enrollment in the program.

SECTION 2. Personal care services. Subject to the requirements under title 42, Code of Federal Regulations, part 440, section 167, the department of human services shall provide personal care services for eligible medical assistance recipients who are residing in their own homes.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 2005, and after that date is ineffective.

Approved April 14, 2003
Filed April 14, 2003

CHAPTER 423**SENATE BILL NO. 2384**

(Senators Schobinger, Brown, J. Lee)
(Representatives Price, Svedjan, Thoreson)

ANNUITY TRANSFER EFFECT ON MEDICAL ASSISTANCE

AN ACT to create and enact a new section to chapter 50-24.1 of the North Dakota Century Code, relating to the effect on medical assistance eligibility of transfers involving annuities.

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:

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. 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 annuity, an instrument purporting to be an annuity, or any other arrangement that meets the definition of annuity in subsection 1 is considered 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 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 department of human 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 by the department pursuant to 42 U.S.C. 1396r-5.

Approved April 23, 2003

Filed April 23, 2003

CHAPTER 424

SENATE BILL NO. 2068

(Human Services Committee)

(At the request of the Department of Human Services)

EYE CARE SERVICES COVERAGE

AN ACT to amend and reenact section 50-24.1-06 of the North Dakota Century Code, relating to remedial eye care services coverage.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-06 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-06. Remedial eye care - When provided. On the basis of the findings of an examination made by an ophthalmologist, optometrist, or physician skilled in the diseases of the eye, recommended remedial eye care services must be provided by the department of human services to any person individual under the age of sixty-five who is in need of treatment either to prevent blindness or to restore the person's eyesight remedial eye care services if the person individual is not blind as defined under title XVI of the Social Security Act, as amended, [42 U.S.C. 1381 et seq.], and the person individual is otherwise qualified for assistance under this chapter. The remedial eye care services may include necessary travel and other expenses to receive treatment from a hospital or clinic designated by the department. Except for services furnished in a medical emergency, the department may not pay for recommended remedial eye care services unless the individual receiving those services first applies for and receives authorization from the department. As used in this section, "remedial eye care services" mean services to prevent blindness or to restore an individual's eyesight, but does not include treatment of diseases causing an impairment or a loss of eyesight, such as diabetes and high blood pressure, ordinary eye examinations, eye glasses, physical examinations, or travel and other expenses necessary to receive treatment.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 425**SENATE BILL NO. 2089**

(Human Services Committee)

(At the request of the Office of Management and Budget)

BREAST OR CERVICAL CANCER MEDICAL ASSISTANCE

AN ACT to amend and reenact section 50-24.1-17 of the North Dakota Century Code, relating to medical assistance for breast or cervical cancer; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.1-17 of the North Dakota Century Code is amended and reenacted as follows:

50-24.1-17. (~~Effective through June 30, 2003~~) Medical assistance for breast or cervical cancer. The department of human services may provide medical assistance for women screened and found to have breast or cervical cancer in accordance with the federal Breast and Cervical Cancer Prevention and Treatment Act of 2000 [Pub. L. 106-354; 114 Stat. 1381; 42 U.S.C. 1396a et seq.]. The department shall establish an income eligibility limit that may not exceed two hundred percent of the poverty line for payments made under this section. For purposes of this section, poverty line means the official income poverty line as defined by the United States office of management and budget and revised annually in accordance with 42 U.S.C. 9902(2), applicable to a family of the size involved.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 2003.

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

Approved April 4, 2003

Filed April 4, 2003

CHAPTER 426**SENATE BILL NO. 2330**

(Senator Mathern)

HOME AND COMMUNITY-BASED LIVING OPTIONS

AN ACT to provide for a choice of options for individuals eligible for home and community-based living.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Home and community-based living - Choice of options. Any aged or disabled individual who is eligible for home and community-based living must be allowed to choose, from among all service options available, the type of service that best meets that individual's needs. To the extent permitted by any applicable waiver, the individual's medical assistance funds must follow the individual for whichever service option the individual selects, not to exceed the cost of the service. The department of human services shall apply for the waivers and grants necessary to implement this section under existing or future federal legislation.

Approved April 11, 2003

Filed April 14, 2003

CHAPTER 427**SENATE BILL NO. 2085**

(Human Services Committee)

(At the request of the Office of Management and Budget)

TARGETED CASE MANAGEMENT AND ASSESSMENT SERVICES

AN ACT to create and enact section 50-24.3-03.1 of the North Dakota Century Code, relating to the powers and duties of the department of human services regarding assessment services; to amend and reenact sections 50-24.3-01 and 50-24.3-03 of the North Dakota Century Code, relating to the establishment of targeted case management and assessment services for persons being admitted to a skilled nursing facility or hospital swing-bed facility; to repeal section 50-24.3-02 of the North Dakota Century Code, relating to professional involvement in the assessment process; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 50-24.3-01 of the North Dakota Century Code is amended and reenacted as follows:

50-24.3-01. ~~(Effective through June 30, 2003)~~ Targeted case management. The department of human services shall establish a targeted case management service for disabled and elderly individuals eligible for benefits under chapter 50-24.1 who are at risk of requiring long-term care services to ensure that an individual is informed of alternatives available to address the individual's long-term care needs.

~~(Effective after June 30, 2003) Assessment mechanism - Establishment.~~ ~~The department of human services shall establish a mechanism to assess, prior to admission to a skilled nursing facility, intermediate care facility, or a hospital swing-bed facility approved to furnish skilled or intermediate care services, the health and social needs of each person making application for admission to the facility.~~

SECTION 2. AMENDMENT. Section 50-24.3-03 of the North Dakota Century Code is amended and reenacted as follows:

50-24.3-03. ~~(Effective through June 30, 2003)~~ Department of human services - Targeted case management - Powers and duties. The department of human services has the following powers and duties which it may delegate to any entity ~~which~~ that provides targeted case management services approved by the department:

1. To seek cooperation from other public and private entities in the community ~~which~~ that offer services to individuals with disabilities or the elderly.
2. To provide information and education to the general public regarding availability of targeted case management.

3. To accept referrals from an interested party including individuals, families, human services program professionals, nursing facility personnel, and acute care facility personnel.
4. To assess the health and social needs of, and provide targeted case management to, referred individuals who wish to receive this service.
5. To identify available noninstitutional services to meet the needs of referred individuals.
6. To prepare an individual care plan for each individual receiving targeted case management services.
7. To inform referred individuals of the extent to which long-term care services are available, including institutional and community-based services, and of the individual's opportunity to choose, in consultation with an attending physician, family members, and other interested parties, among the appropriate alternatives that may be available.
8. To monitor the results of targeted case management and report to each legislative assembly on these results and the cost-effectiveness of these services.

(Effective after June 30, 2003) Department of human services - Powers and duties. The department of human services has the following powers and duties which it may delegate to any entity which provides assessment services approved by the department:

1. To seek cooperation from other public and private agencies in the community which offer services to disabled and elderly persons.
2. To provide information and education to the general public regarding availability of the assessment program.
3. To accept referrals from individuals, families, human services professionals, and nursing home personnel.
4. To assess the health and social needs of referred individuals.
5. To identify available noninstitutional services to meet the needs of referred individuals.
6. To prepare recommendations for individuals receiving assessment program services as to the need for skilled nursing care, or intermediate care as provided in a facility, or other care which is available in the community.
7. To inform referred individuals of the extent to which home and community-based services are available, and of their opportunity to choose, in consultation with an attending physician and family member, among the appropriate alternatives that may be available.

SECTION 3. Section 50-24.3-03.1 of the North Dakota Century Code is created and enacted as follows:

50-24.3-03.1. Department of human services - Assessment services - Powers and duties. The department of human services has the following powers and duties which it may delegate to any entity that provides assessment services approved by the department:

1. To seek cooperation from other public and private agencies in the community which offer services to disabled and elderly persons.
2. To provide information and education to the general public regarding availability of the assessment program.
3. To accept referrals from individuals, families, human services program professionals, nursing facility personnel, and acute care facility personnel.
4. To assess the health and social needs of referred individuals.
5. To identify available noninstitutional services to meet the needs of referred individuals.
6. To prepare recommendations for individuals receiving assessment program services as to the need for skilled nursing care or other care available in the community.
7. To inform referred individuals of the extent to which home and community-based services are available and of their opportunity to choose, in consultation with an attending physician and family member, among the appropriate alternatives that may be available.

SECTION 4. REPEAL. Section 50-24.3-02 of the North Dakota Century Code is repealed.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 428

HOUSE BILL NO. 1268

(Representatives Devlin, Nicholas, Wald)
(Senators Nichols, Thane, Wardner)

NURSING HOME RATES AND PROPERTY COSTS

AN ACT to amend and reenact section 50-24.4-15 of the North Dakota Century Code, relating to nursing home rates for property-related costs for reimbursements; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁸⁹ **SECTION 1. 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:
 4. a. Recognize ~~to the extent allowed by federal rules~~ the valuation basis of assets acquired in a bona fide transaction as an ongoing operation after July 1, 1985, limited to the lowest of:
 - a. (1) Purchase price paid by the purchaser;
 - b. (2) Fair market value at the time of sale;
 - c. (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; ~~or~~
 - d. ~~Seller's cost basis, increased by one-half of the increase in the Dodge construction index from the date of acquisition by the seller to the date of acquisition by the buyer, less accumulated depreciation.~~
 2. 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.

¹⁸⁹ Section 50-24.4-15 was also amended by section 7 of Senate Bill No. 2348, chapter 86.

- ~~3.~~ c. Recognize depreciation on movable equipment acquired as an ongoing operation after August 1, 1995, over a composite remaining useful life.
 4. d. Provide for an interest expense limitation determined by the department and established by rule.
 - ~~5.~~ e. Establish a per bed property cost limitation considering single and double occupancy construction. ~~Property costs incurred or related to projects having received state health council certificate of need approval prior to July 1, 1994, are not subject to this limitation.~~
 - ~~6.~~ 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.
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 the effective date of this Act.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 2005.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 429

HOUSE BILL NO. 1164

(Human Services Committee)

(At the request of the Department of Human Services)

ASSISTED LIVING FACILITY LICENSING

AN ACT to create and enact chapter 50-32 of the North Dakota Century Code, relating to licensing of assisted living facilities; to amend and reenact subsection 8 of section 23-09-01 and sections 50-24.5-01 and 50-24.5-02 of the North Dakota Century Code, relating to assisted living facilities; to repeal section 50-24.5-02.1 of the North Dakota Century Code, relating to registration of assisted living facilities; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁰ **SECTION 1. AMENDMENT.** Subsection 8 of section 23-09-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Lodging establishment" includes every building or structure, or any part thereof, which is kept, used, maintained, or held out to the public as a place where sleeping accommodations are furnished for pay to four or more transient guests. The term does not include a facility providing personal care services directly or through contract services as defined in section 23-09.3-01 or ~~50-24.5-04~~ 50-32-01.

SECTION 2. AMENDMENT. Section 50-24.5-01 of the North Dakota Century Code is amended and reenacted as follows:

50-24.5-01. Definitions. In this chapter, unless the context otherwise requires:

1. "~~Activities of daily living~~" means ~~bathing, dressing, toileting, transferring, eating, bed mobility, medication management, and personal hygiene.~~
2. "Aged" means at least sixty-five years of age.
3. "~~Assisted living facility~~" means ~~any building or structure containing a series of living units operated as one business entity to provide services for five or more individuals who are aged or disabled adults and who are not related by blood or marriage to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that makes available individualized support services to accommodate an individual's needs and abilities to maintain as much independence as possible. It does not include a facility that is licensed as a basic care facility or a congregate housing facility.~~

¹⁹⁰ Section 23-09-01 was also amended by section 2 of House Bill No. 1160, chapter 214.

4. 2. "Blind" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
5. 3. "Congregate housing" means housing shared by two or more individuals not related to each other which is not provided in an institution.
6. 4. "County agency" means the county social service board.
7. 5. "Department" means the department of human services.
8. 6. "Disabled" has the same meaning as the term has when used by the social security administration in the supplemental security income program under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
9. 7. "Eligible beneficiary" means a resident of this state who:
- a. (1) Is aged; or
 - (2) Is at least eighteen years of age and is disabled or blind;
 - b. Has applied for and is eligible to receive benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], provided that an individual who was eligible to receive benefits under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] and who was receiving benefits under title XVI before January 1, 1995, is not ineligible because that individual is not eligible to receive benefits under title XIX;
 - c. Based on a functional assessment, is not severely impaired in any of the activities of daily living of toileting, transferring to or from a bed or chair, or eating and:
 - (1) Has health, welfare, or safety needs, including a need for supervision or a structured environment, which require care in a licensed adult family foster care home or an assisted living facility; or
 - (2) Is impaired in three of the following four instrumental activities of daily living: preparing meals, doing housework, taking medicine, and doing laundry; and
 - d. Is determined to be eligible pursuant to rules adopted by the department.
10. ~~"Individualized support services" means services designed to provide assistance to adults who may have physical or cognitive impairments and who require at least a moderate level of assistance with one or more activities of daily living.~~
14. 8. "Institution" means an establishment that makes available some treatment or services beyond food or shelter to five or more individuals who are not related to the proprietor.

- ~~42.~~ "Instrumental activities of daily living" means activities to support independent living including housekeeping, shopping, laundry, transportation, and meal preparation.
- ~~43.~~ 9. "Living independently" includes living in congregate housing. The term does not include living in an institution.
- ~~44.~~ "Living unit" means a portion of an assisted living facility occupied as the living quarters of an individual who has entered into a lease agreement with the assisted living facility.
- ~~45.~~ 10. "Proprietor" means an individual responsible for day-to-day administration and management of a facility.
- ~~46.~~ 11. "Qualified service provider" means a county agency or independent contractor who agrees to meet standards for services and operations established by the department.
- ~~47.~~ "Related by blood or marriage to the owner or manager" means an individual who is a spouse or former spouse of the owner or manager or is a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of the owner or manager or the owner or manager's spouse or former spouse.
- ~~48.~~ 12. "Related to the proprietor" means an individual who is a proprietor's spouse or former spouse, or a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of a proprietor or proprietor's spouse or former spouse.
- ~~49.~~ 13. "Remedial care" means services that produce the maximum reduction of an eligible beneficiary's physical or mental disability and the restoration of an eligible beneficiary to the beneficiary's best possible functional level.
- ~~20.~~ "Tenant" means an adult individual who has entered into a lease agreement with an assisted living facility.
- ~~24.~~ 14. "Would be eligible to receive the cash benefits except for income" refers to an individual whose countable income, less the cost of necessary remedial care that may be provided under this chapter, does not exceed an amount equal to the cash benefit under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.] which the individual would receive if the individual had no income, plus sixty dollars.

SECTION 3. AMENDMENT. Section 50-24.5-02 of the North Dakota Century Code is amended and reenacted as follows:

50-24.5-02. Powers and duties of the department. The department shall:

1. Administer aid to vulnerable aged, blind, and disabled persons and supervise and direct county agencies in the administration of aid to vulnerable aged, blind, and disabled persons.

2. Supplement, within the limits of legislative appropriation, the income of an eligible beneficiary receiving necessary adult family foster care services to the extent that the eligible beneficiary lacks income sufficient to meet the cost of that care provided at rates determined by the department.
3. Supplement, within the limits of legislative appropriation, the income of an eligible beneficiary receiving necessary basic care services to the extent that the eligible beneficiary lacks income sufficient to meet the cost of that care, provided at rates determined by the department.
4. Pay qualified service providers at rates determined by the department, within the limits of legislative appropriation, for the provision of the following services provided to an eligible beneficiary to the extent that the eligible beneficiary lacks income sufficient to meet the cost of these services:
 - a. Homemaker services;
 - b. Chore services;
 - c. Respite care;
 - d. Home health aide services;
 - e. Case management;
 - f. Family home care;
 - g. Personal attendant care;
 - h. Adult family foster care;
 - i. Adaptive assessment; and
 - j. Other services the department determines to be essential and appropriate to sustain an individual in the individual's home and community and to delay or prevent institutional care.
5. Establish, maintain, and ensure the enforcement of standards for congregate housing as may be appropriate to the needs of the residents of congregate housing who are receiving services under this chapter. The standards must govern matters such as admission policy, safety, sanitation, and protection of civil rights.
6. Establish an individualized care rate for each eligible beneficiary receiving adult family foster care services or assisted living services.
7. Issue payment to basic facilities and adult family foster care facilities for services provided to an eligible beneficiary.
8. Take action and give directions necessary to implement this chapter.
9. ~~Establish a method to receive complaints related to assisted living facilities and to forward the complaints to the appropriate agency for investigation.~~

SECTION 4. Chapter 50-32 of the North Dakota Century Code is created and enacted as follows:

50-32-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Assisted living facility" means a building or structure containing a series of living units operated as one entity to provide services for five or more individuals who are not related by blood, marriage, or guardianship to the owner or manager of the entity and which is kept, used, maintained, advertised, or held out to the public as a place that provides or coordinates individualized support services to accommodate the individual's needs and abilities to maintain as much independence as possible. An assisted living facility does not include a facility that is a congregate housing facility, licensed as a basic care facility, or licensed under chapter 23-16 or 25-16.
2. "Department" means the department of human services.
3. "Entity" means an individual, institution, organization, limited liability company, or corporation, whether or not organized for profit.
4. "Individualized support services" means services provided to individuals who may require assistance with the activities of daily living of bathing, dressing, toileting, transferring, eating, medication management, and personal hygiene.
5. "Living unit" means a portion of an assisted living facility occupied as the living quarters of an individual who has entered into a lease agreement with the assisted living facility.
6. "Related by blood or marriage to the owner or manager" means an individual who is a spouse or former spouse of the owner or manager or is a parent, stepparent, grandparent, stepgrandparent, child, stepchild, grandchild, stepgrandchild, brother, sister, half-brother, half-sister, stepbrother, or stepsister of the owner or manager or the owner or manager's spouse or former spouse.

50-32-02. Licensing of assisted living facilities - Penalty.

1. An entity may not keep, operate, conduct, manage, or maintain an assisted living facility or use the term "assisted living" in its advertising unless it is licensed by the department.
2. An assisted living facility shall pay to the department an annual license fee of seventy-five dollars for each facility. License fees collected under this section must be deposited in the department's operating fund in the state treasury. An expenditure from the fund is subject to appropriation by the legislative assembly.
3. An assisted living facility shall apply annually to the department for a license. After the fifty-ninth day following the notification of noncompliance with annual licensing, the department may assess a fine of up to fifty dollars per day against an entity that provides assisted living services or uses the term assisted living in its marketing without a license approved by the department. Fines collected under this section

must be deposited in the department's operating fund in the state treasury. An expenditure from the fund is subject to appropriation by the legislative assembly.

4. Religious orders providing individualized support services to vowed members residing in the order's retirement housing are not subject to this chapter.

50-32-03. Powers and duties of the department. The department shall:

1. Take action and give directions necessary to implement this chapter.
2. Establish a method to receive complaints related to assisted living facilities and to forward the complaints to the appropriate agency for investigation.
3. Establish rules governing the licensing of assisted living facilities to regulate the application for, approval, denial, revocation, and requirements of a license.

50-32-04. Assisted living facility health services. An entity may provide health services to individuals residing in an assisted living facility owned or operated by that entity. For purposes of this section, health services means services provided to an individual for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability.

SECTION 5. REPEAL. Section 50-24.5-02.1 of the North Dakota Century Code is repealed.

Approved March 13, 2003
Filed March 13, 2003

CHAPTER 430

HOUSE BILL NO. 1430

(Representatives Devlin, Price, Weisz)
(Senators Fischer, J. Lee)

DRUG UTILIZATION REVIEW PROGRAM

AN ACT to establish a medical assistance drug use review program and drug prior authorization program within the department of human services; to provide for a legislative council study of medical assistance pharmacy benefit management; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Board" means the drug use review board.
2. "Compendium" means the American hospital formulary service drug information, United States pharmacopeia-drug information, the DRUGDEX information system, American medical association drug evaluations, or nonproprietary peer-reviewed medical literature.
3. "Department" means the department of human services.
4. "Drug use review" means a program as described in 42 U.S.C. 1396r-8(g)(2).
5. "Drug use review criteria" means standards approved by the board for use in determining whether use of a drug is likely to be medically appropriate, to be medically necessary, and not result in adverse medical outcomes.
6. "Prior authorization" means a process requiring the prescriber or the dispenser to verify with the department or the department's contractor that proposed medical use of a particular drug for a medical assistance program recipient meets predetermined criteria for coverage by the medical assistance program.

SECTION 2. Drug use review board.

1. The board is established within the department for the implementation of a drug use review program.
2. The board consists of fifteen members. The pharmacy administrator of the department and the medical consultant to the department are ex officio nonvoting board members who shall provide administrative services to the board. The executive director of the department shall appoint the remaining thirteen board members. A majority of the appointed members must be physicians and pharmacists participating in the medical assistance program. Four or more of the appointed members must have experience with a drug use review process or have

participated in programs in which prior authorization is used. The appointed members of the board must be:

- a. Six physicians licensed in this state and actively engaged in the practice of medicine, one of whom is a psychiatrist, and four of whom are chosen from a list of nominees provided by the North Dakota medical association;
 - b. Six pharmacists licensed in this state and actively engaged in the practice of pharmacy, four of whom are chosen from a list of nominees provided by the North Dakota pharmaceutical association; and
 - c. One pharmacist or physician representing the pharmaceutical industry who is chosen from a list of nominees provided by the pharmaceutical research manufacturers of America.
3. Appointed board members shall serve staggered three-year terms. Two physicians and two pharmacists must be initially appointed for two-year terms, and two physicians and two pharmacists must be initially appointed for one-year terms. An appointed member may be reappointed for a period not to exceed three 3-year terms. A vacancy on the board must be filled for the balance of the unexpired term from the appropriate board category as provided under subsection 2. The executive director of the department may replace an appointed member of the board who fails to attend three consecutive meetings of the board without advance excuse or who fails to perform the duties expected of a board member. The pharmaceutical industry representative is a nonvoting board member.
 4. Voting board members shall select a chairman and a vice chairman on an annual basis from the board's voting membership.
 5. The board shall meet in person at least once every three months and may meet at other times by teleconference or electronically at the discretion of the chairman. A board member is entitled to receive from the department per diem compensation and reimbursement of expenses as determined by the department, except that no compensation under this section may be paid to any board member who receives compensation or salary as a state employee or official.

SECTION 3. Duties of the board. The board shall:

1. Cooperate with the department to create and implement a prospective and retrospective drug use review program for outpatient prescription drugs under the medical assistance program. This drug use review program must be based on a compendium and drug use review criteria and must comply with 42 U.S.C. 1396r-8(g)(3).
2. Advise and make recommendations regarding any rule proposed for adoption by the department to implement the provisions of state and federal law related to drug use review.
3. Receive and consider information regarding the drug use review process which is provided by the department and by interested parties,

including prescribers who treat significant numbers of patients under the department's medical assistance program.

4. Review and recommend to the department any drugs to be included on prior authorization status.
5. Review no less than once each year the status of the list of drugs that have been placed on prior authorization.
6. Review and approve the prior authorization program process used by the department, including the process to accommodate the provision of a drug benefit in an emergency situation.
7. Propose remedial strategies to improve the quality of care and to promote effective use of medical assistance program funds or recipient expenditures.

SECTION 4. 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 5. Public notice - Applicability.

1. The department shall provide thirty days' notice of all meetings of the board. The notice requirement is met if the department provides notice of the meeting on the department's web site and provides, by written or electronic means, individual notice to each person that has requested such notice. If the meeting agenda includes board consideration of a change to the prior authorization program, the department shall include in the notice a list of the affected drugs, and upon request the board shall provide background information. Any interested party may attend a meeting of the board and provide information or recommendations related to the inclusion of a drug in a prior authorization program.
2. The department shall post on the department's web site:
 - a. The most current and applicable list of drugs requiring prior authorization, together with any limits on coverage of these drugs.
 - b. In downloadable format, forms necessary to complete prior authorization requests.
 - c. Decisions regarding changes to the prior authorization program list. The department shall allow a period of no less than thirty days for public comment following posting on the web site.
 - d. Meeting notice.
3. The department may not discontinue the provision of prescription drug benefits being provided to medical assistance recipients before the effective date of this Act based solely on the subsequent placement of the drug on the prior authorization program.

SECTION 6. Grievances. The department shall adopt rules for a grievance procedure by which an interested person may appeal a department decision to place a drug on prior authorization.

SECTION 7. Appeals. A medical assistance recipient who is aggrieved by the placement of a drug on prior authorization may appeal as authorized under chapter 28-32.

SECTION 8. Financial incentives prohibited. The department may not offer or pay, directly or indirectly, any material inducement, bonus, or other financial incentive to a participating provider based on the denial or delay of medically necessary and appropriate prescription drug therapy or based on a reduction in the proportion of recipients who receive prescription drug therapy under the medical assistance program.

SECTION 9. Maximum allowable costs and use of edits. To promote efficiency and savings in the department's service to eligible medical assistance program recipients, the department shall create and implement the broadest possible list of drugs that can be paid at the maximum allowable costs. To further promote efficiency and savings, the department shall maximize use of edit programs that pertain to payment of medical assistance program pharmaceutical claims. Upon request of a member of the legislative assembly, the department shall provide to that member a summary of edit programs available to the medical assistance program and a description of the department's progress in implementing the edit programs.

SECTION 10. Adoption of rules. The department shall adopt rules to implement sections 1 through 9 of this Act.

SECTION 11. MEDICAL ASSISTANCE PHARMACY BENEFIT MANAGEMENT - LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2003-04 interim, the value of medical assistance program use of benefit purchasing pools, preferred drug lists, and other pharmacy benefit management concepts, including the fiscal impact of the appeals and grievance process on existing programs. If the study is conducted by the legislative council, the legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 12. EXPIRATION DATE. Section 6 of this Act is effective through June 30, 2005, and after that date is ineffective.

SECTION 13. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 14, 2003
Filed April 14, 2003

CHAPTER 431

SENATE BILL NO. 2271

(Senator J. Lee)
(Representative Price)

REPORTING PRENATAL EXPOSURE TO CONTROLLED SUBSTANCES

AN ACT to create and enact three new sections to chapter 50-25.1 of the North Dakota Century Code, relating to prenatal testing and reporting; and to amend and reenact section 50-25.1-02 of the North Dakota Century Code, relating to child abuse and neglect reporting requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹¹ **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.

1. "A person responsible for the child's welfare" means the child's parent, guardian, or foster parent; an employee of 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.~~ 3. "Abused child" means an individual under the age of eighteen years who is suffering from serious physical harm or traumatic abuse caused by other than accidental means by a person responsible for the child's welfare, or who is suffering from or was subjected to any act involving that individual in violation of sections 12.1-20-01 through 12.1-20-08.
- ~~4.~~ 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.
- ~~4.~~ 5. "Department" means the department of human services or its designee.
- ~~5.~~ 6. "Harm" means negative changes in a child's health which occur when a person responsible for the child's welfare:

¹⁹¹ Section 50-25.1-02 was also amended by section 4 of Senate Bill No. 2212, chapter 106.

- 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.
- ~~6.~~ 7. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect where the person 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.
- ~~7.~~ 8. "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.
- ~~8.~~ 9. "Neglected child" means a deprived child as defined in chapter 27-20.
- ~~9.~~ 10. "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.
11. "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.
- ~~40.~~ 12. "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. A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

Prenatal exposure to controlled substances - Reporting requirements.

1. An individual required to report under section 50-25.1-03 who has knowledge of or reasonable cause to suspect that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy shall report the circumstances to the department if the knowledge or suspicion is derived from information received by that individual in that individual's official or professional capacity.
2. Any individual may make a voluntary report if the individual has knowledge of or reasonable cause to suspect that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy.
3. If a report alleges a pregnant woman's use of a controlled substance for a nonmedical purpose, the department or its designee shall immediately initiate an appropriate assessment and offer services indicated under the circumstances. Services offered may include a referral for chemical dependency assessment, a referral for chemical dependency treatment if recommended, or a referral for prenatal care. The department or its designee may also take any appropriate action under chapter 25-03.1.
4. A report and assessment under this section is not required if the pregnant woman voluntarily enters treatment in a licensed treatment program. If the pregnant woman does not complete voluntary treatment or fails to follow treatment recommendations, an individual required to report under section 50-25.1-03 who has knowledge of the failure to complete voluntary treatment or failure to follow treatment recommendations shall make a report as required by this section.
5. A report under this section must be made as described in section 50-25.1-04 and must be sufficient to identify the woman, the nature and extent of use, if known, and the name and address of the individual making the report.

SECTION 3. A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

Toxicology testing - Requirements.

1. If the woman has obstetrical complications that are a medical indication of possible use of a controlled substance for a nonmedical purpose, upon the consent of the pregnant woman, or without consent if a specimen is otherwise available, a physician shall administer a toxicology test to a pregnant woman under the physician's care or to a woman under the physician's care within eight hours after delivery to determine whether there is evidence that she has ingested a controlled substance. If the test results are positive, the physician shall report the results under section 50-25.1-03.1. A negative test result or the

pregnant woman's refusal to consent to a test does not eliminate the obligation to report under section 50-25.1-03 if other evidence gives the physician reason to believe the patient has used a controlled substance for a nonmedical purpose.

2. If a physician has reason to believe based on a medical assessment of the mother or the infant that the mother used a controlled substance for a nonmedical purpose during the pregnancy, the physician shall administer, without the consent of the child's parents or guardian, to the newborn infant born under the physician's care a toxicology test to determine whether there is evidence of prenatal exposure to a controlled substance. If the test results are positive, the physician shall report the results as neglect under section 50-25.1-03. A negative test result does not eliminate the obligation to report under section 50-25.1-03 if other medical evidence of prenatal exposure to a controlled substance is present.
3. A physician or any other medical personnel administering a toxicology test to determine the presence of a controlled substance in a pregnant woman, in a woman within eight hours after delivery, or in a child at birth or during the first month of life is immune from civil or criminal liability arising from administration of the test if the physician ordering the test believes in good faith that the test is required under this section and the test is administered in accordance with an established protocol and reasonable medical practice. A physician or any other medical personnel who determines in good faith not to administer a toxicology test under this section is immune from liability for not administering the test.

SECTION 4. A new section to chapter 50-25.1 of the North Dakota Century Code is created and enacted as follows:

Prenatal exposure to alcohol abuse - Reporting requirements.

1. An individual required to report under section 50-25.1-03 who has knowledge of or reasonable cause to suspect that a woman is pregnant and has abused alcohol after the woman knows of the pregnancy may:
 - a. Arrange for a chemical dependency assessment conducted by a licensed treatment program and confirm that the recommendations indicated by the assessment are followed; or
 - b. Immediately report the circumstances to the department if the knowledge or suspicion is derived from information received by that individual in that individual's official or professional capacity.
2. An individual may make a voluntary report if the individual has knowledge of or reasonable cause to suspect that a woman is pregnant and has abused alcohol during the pregnancy.
3. If the woman is referred for a chemical dependency assessment under subdivision a of subsection 1 and fails to obtain an assessment or refuses to comply with the recommendations of the assessment, an individual required to report under section 50-25.1-03 who has knowledge of the failure to obtain the assessment or refusal to comply

with recommendations of the assessment shall make a report to the department.

4. If a report alleges a pregnant woman has abused alcohol, the department or its designee shall immediately initiate an appropriate assessment and offer services indicated under the circumstances. Services offered may include a referral for chemical dependency assessment, a referral for chemical dependency treatment, if recommended, or a referral for prenatal care. The department or its designee may also take any appropriate action under chapter 25-03.1.
5. A report and assessment under this section is not required if the pregnant woman voluntarily enters treatment in a licensed treatment program. If the pregnant woman does not complete voluntary treatment or fails to follow treatment recommendations, an individual required to report under section 50-25.1-03 who has knowledge of the failure to complete voluntary treatment or failure to follow treatment recommendations shall make a report as required by this section.
6. A report under this section must be made as described in section 50-25.1-04 and must be sufficient to identify the woman, the nature and extent of the abuse of alcohol, any health risk associated with the abuse of alcohol, and the name and address of the individual making the report.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 432

HOUSE BILL NO. 1165

(Human Services Committee)

(At the request of the Department of Human Services)

SUBSTANCE ABUSE TREATMENT PROGRAMS

AN ACT to create and enact chapter 50-31 of the North Dakota Century Code, relating to substance abuse treatment programs; to amend and reenact subsection 12 of section 25-03.1-02 and subdivision b of subsection 2 of section 26.1-36-08 of the North Dakota Century Code, relating to the correction of statutory cross-references; and to repeal chapter 23-17.1 of the North Dakota Century Code, relating to the licensing of addiction hospitals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹² **SECTION 1. AMENDMENT.** Subsection 12 of section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12. "Private treatment facility" means any facility established under chapter 10-19.1 or 10-33 and licensed under chapter 23-16 or ~~23-17.1~~ 50-31.

¹⁹³ **SECTION 2. AMENDMENT.** Subdivision b of subsection 2 of section 26.1-36-08 of the North Dakota Century Code is amended and reenacted as follows:

- b. In the case of benefits provided for partial hospitalization, the benefits must be provided for a minimum of one hundred twenty days of services covered under this section and section 26.1-36-09 in any calendar year if provided by a hospital as defined in subsection 25 of section 52-01-01 and rules of the state department of health pursuant thereto or as licensed under ~~section 23-17.1-04~~ chapter 50-31, or by a regional human service center licensed under section 50-06-05.2, offering treatment for the prevention or cure of alcoholism, drug addiction, or other related illness. For services provided in regional human service centers, charges must be reasonably similar to the charges for care provided by hospitals as defined in this subsection.

SECTION 3. Chapter 50-31 of the North Dakota Century Code is created and enacted as follows:

50-31-01. Definition. "Department" means the department of human services.

¹⁹² Section 25-03.1-02 was also amended by section 1 of Senate Bill No. 2296, chapter 224.

¹⁹³ Section 26.1-36-08 was also amended by section 1 of Senate Bill No. 2210, chapter 255.

50-31-02. License required. A person, partnership, association, corporation, or limited liability company without a license may not establish, conduct, or maintain in this state a substance abuse treatment program for the care of persons addicted to alcohol or other drugs. The department, in accordance with the laws of this state governing injunctions and other process, may maintain an action in the name of the state against a person, partnership, association, corporation, or limited liability company for establishing, conducting, managing, or operating a substance abuse treatment program without a license.

50-31-03. Application - Contents. A person, partnership, association, corporation, or limited liability company desiring a license shall file with the department a verified application containing the name of the applicant, the type of institution to be operated, the location, the name of the individual or individuals in charge, and such other information as the department may require.

50-31-04. Inspection and evaluation of licensed premises. Every licensed substance abuse treatment program shall obtain and provide to the department a local or state authority certification as to the safety of the premises. The department shall evaluate every licensed substance abuse treatment program according to the rules adopted by the department.

50-31-05. Issuance, suspension, and revocation of license.

1. The department is authorized to issue licenses to operate substance abuse treatment programs, for a period of two years, which are found to comply with the provisions of this chapter and rules adopted by the department.
2. The department may suspend or revoke a license if a program violates any of the rules adopted by the department.
3. Before a license may be suspended or revoked, written notice must be given to the licenseholder. The licenseholder must be furnished with a copy of the notice by registered mail. If a license is revoked, a new application for a license may be considered by the department when the conditions upon which the revocation were based have been corrected and evidence of this fact has been satisfactorily furnished. A new license may then be granted after proper inspection has been made and the applicant has complied with all rules adopted by the department. Within thirty days after service of the written charges, the applicant or licensee may submit to the department a written request for an administrative hearing as provided in chapter 28-32.

50-31-06. Information confidential. Information received by the department through inspections of programs under this chapter is confidential and may not be disclosed except in a proceeding involving the issuance of a license.

SECTION 4. REPEAL. Chapter 23-17.1 of the North Dakota Century Code is repealed.

Approved March 13, 2003
Filed March 13, 2003

SALES AND EXCHANGES

CHAPTER 433

SENATE BILL NO. 2114

(Industry, Business and Labor Committee)
(At the request of the Public Service Commission)

AUCTIONEER AND CLERK FEES AND BONDS

AN ACT to amend and reenact section 51-05.1-01.1 of the North Dakota Century Code, relating to auctioneer and auction clerk license fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-05.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

51-05.1-01.1. Auctioneer's license - Clerk's license - Fees - Bonds.
~~Application~~ The initial application for an annual auctioneer's or clerk's license must be in writing, verified, and must show the name, residence, and address of the applicant. An application must be filed at least ten days prior to the first auction sale the applicant is to conduct or clerk. Application for renewal of an annual license must be on forms designated by the commission. The fee for the annual license or renewal is thirty-five dollars and must accompany the application. The name and license number must appear on all advertising of sales conducted by an auctioneer or clerk. Renewals that are not ~~submitted~~ received by January thirty-first must be assessed an additional twenty-five dollar fee.

Before a license is issued to an auctioneer or auction clerk, the applicant must file a corporate surety bond with the commission. This bond must provide annual coverage of not less than five thousand dollars for an auctioneer or ten thousand dollars for an auction clerk, must run to the state of North Dakota, and must be for the benefit of any person injured by the licensee's improper conduct. Bonds may not be canceled on less than sixty days' written notice to the commission. ~~When a licensee states that it is bonded, the~~ The size of the licensee's bond must be clearly and prominently stated in all contracts with sellers.

Approved March 14, 2003
Filed March 17, 2003

CHAPTER 434**SENATE BILL NO. 2229**

(Senators Trenbeath, Espegard, Urlacher)
(Representatives Herbel, Schmidt)

AUCTIONEER LICENSING

AN ACT to amend and reenact subdivision d of subsection 1 of section 51-05.1-03 of the North Dakota Century Code, relating to grounds for refusal, suspension, or revocation of an auctioneer's or auction clerk's license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision d of subsection 1 of section 51-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- d. Failed to account for or to remit, within a reasonable time, not exceeding ~~fifteen~~ thirty days, any moneys coming into the licensee's possession belonging to another, ~~or subsequent to July 4, 1975,~~ commingled funds of others with the licensee's own, failed to keep such funds or others in an escrow or trust account with a bank or other recognized depository in this state, or failed to keep records relative to the deposits, which must contain such information as ~~may be~~ prescribed by the rules ~~and regulations~~ of the commission ~~relative thereto~~.

Approved March 19, 2003
Filed March 19, 2003

CHAPTER 435

HOUSE BILL NO. 1266 (Representatives Delzer, Kempenich) (Senator Krebsbach)

IMPLEMENT CONTRACT TERMINATION REMEDIES

AN ACT to amend and reenact sections 51-07-01, 51-07-01.1, and 51-07-03 of the North Dakota Century Code, relating to contract remedies for termination of certain retail contracts; and to repeal section 51-07-02 of the North Dakota Century Code, relating to calculation of costs for merchandise of certain retail contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 51-07-01 of the North Dakota Century Code is amended and reenacted as follows:

51-07-01. Retail farm implement; lawn and garden equipment; or ear vehicle dealer may recover price of articles merchandise upon discontinuance of contract by wholesaler or retail dealer.

1. If a person engaged in the business of ~~selling and~~ retailing farm implements ~~and, machinery, or attachments, or parts for farm implements, the same; lawn and garden equipment, or parts for the same; or in the business of selling and retailing~~ automobiles, trucks, or semitrailers, or parts for the same, enters a ~~written~~ contract under which the retailer agrees to maintain a stock of ~~parts or complete or whole machines, or attachments~~ the merchandise covered under this section with a wholesaler, manufacturer, or distributor ~~of farm implements, machinery, attachments, or parts for the same, or automobiles, trucks, or semitrailers, or parts for the same,~~ of the covered merchandise and tools and the wholesaler, manufacturer, or distributor or the retailer desires to cancel or discontinue the contract, the wholesaler, manufacturer, or distributor shall pay to the retailer, unless the retailer ~~should desire~~ desires to keep the merchandise, a sum equal to ~~one~~:
 - a. One hundred percent of the net cost of all current unused complete farm implements, machinery, and attachments; lawn and garden equipment; and automobiles, trucks, and semitrailers, including.
 - b. One hundred percent of the actual merchandise and tool transportation charges that have been paid by the retailer, and eighty-five.
 - c. Ninety percent of the ~~current~~ net prices on parts, including superseded parts ~~listed in current,~~ as shown in the manufacturer's, wholesaler's, or distributor's current price lists or catalogs ~~which in effect at the time the contract is canceled, discontinued, or not renewed.~~ These parts ~~had~~ must have previously been purchased from the wholesaler, manufacturer, or distributor, and must have been either held by the retailer on the date of the cancellation or of, discontinuance of, or failure to renew the contract or ~~thereafter~~

received by the retailer from the wholesaler, manufacturer, or distributor after the date of the cancellation, discontinuance, or failure to renew. ~~The wholesaler, manufacturer, or distributor shall also pay the retailer a sum equal to five~~

- d. Fifty percent of the net cost of all complete specialized tools for the covered merchandise.
- e. Five percent of the current net price of all parts returned for the handling, packing, and loading of the parts back to the wholesaler, manufacturer, or distributor.
2. Upon the payment of the ~~sum equal to one hundred percent of the net cost of the farm implements, machinery, attachments, automobiles, trucks, and semitrailers plus transportation charges that have been paid by the retailer and eighty-five percent of the current net prices on parts, plus freight charges that have been paid by the retailer, plus five percent of the current net prices for handling and loading costs on parts only~~ amounts under subsection 1, the retailer shall pass the title to the ~~farm implements, farm machinery, attachments, automobiles, trucks, semitrailer, or parts covered merchandise and tools~~ to the manufacturer, wholesaler, or distributor making the payment, and the manufacturer, wholesaler, or distributor is entitled to the possession of the farm implements, machinery, attachments, automobiles, trucks, semitrailers, or parts covered merchandise and tools. All payments required to be made under this section must be made within thirty days after the final settlement between the retailer and the wholesaler, manufacturer, or distributor.
3. The provisions of this section are supplemental to any agreement between the retailer and the manufacturer, wholesaler, or distributor covering the return of ~~farm implements, machinery, attachments, automobiles, trucks, semitrailers, and parts~~ so that the any merchandise and tools covered under this section. The retailer can elect to pursue either the retailer's contract remedy or the remedy provided in this section. An election by the retailer to pursue the retailer's contract remedy does not bar the retailer's right to the remedy provided in this section as to ~~those farm implements, machinery, attachments, automobiles, trucks, semitrailers, and parts~~ any merchandise and tools covered under this section which is not affected by the contract remedy.
4. The obligations of any wholesaler, manufacturer, or distributor under this section and sections 51-07-01.1 and 51-07-03 apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A successor in interest includes any purchaser of assets or stock, any surviving corporation or limited liability company resulting from a merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer, or distributor.
5. The provisions of this section apply to all contracts now in effect which have no expiration date and are a continuing contract, and all other contracts entered or renewed after ~~June 30, 1987~~ July 31, 2003. Any contract in force and effect on ~~July 4, 1987~~ August 1, 2003, which by its own terms will terminate on a date subsequent thereto is governed by the law as it existed before ~~July 4, 1987~~ August 1, 2003.

SECTION 2. AMENDMENT. Section 51-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

51-07-01.1. Termination of franchises retail contract to be done in good faith - Definition of good cause.

1. Any manufacturer, wholesaler, or distributor of ~~farm implements, machinery, and parts for the same, or of automobiles, trucks, semitrailers, and parts for the same~~ merchandise and tools covered under section 51-07-01, who enters into a contract with any person engaged in the business of ~~selling and retailing farm implements and parts for farm implements, or in the business of selling and retailing automobiles, trucks, or semitrailers, or parts for the same~~ the covered merchandise by which the retailer agrees to maintain a stock of ~~parts or complete or whole machines or attachments, automobiles, trucks, or semitrailers~~ the covered merchandise may not terminate, cancel, or fail to renew the contract with the ~~person~~ retailer without good cause.
2. For the purpose of this section, good cause for terminating, canceling, or failing to renew a contract is limited to failure by the ~~person in the business of selling and retailing~~ retailer to substantially comply with those essential and reasonable requirements imposed by the ~~written~~ contract between the parties if the requirements are not different from those requirements imposed on other similarly situated ~~dealers~~ retailers. Further, the determination by the manufacturer, wholesaler, or distributor of good cause for the termination, cancellation, or failure to renew must be made in good faith.
3. In any action against a manufacturer, wholesaler, or distributor for violation of this section, the manufacturer, wholesaler, or distributor shall establish that the termination, cancellation, or failure to renew was made in good faith for good cause ~~as that term is defined in this section~~. If the manufacturer, wholesaler, or distributor fails to establish good cause for its action, ~~it~~ the manufacturer, wholesaler, or distributor is liable for all special and general damages sustained by the plaintiff, including the costs of the litigation and reasonable attorney's fees for prosecuting the action and the plaintiff, ~~when~~ if appropriate, is entitled to injunctive relief. ~~The obligations of any wholesaler, manufacturer, or distributor apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A successor in interest includes any purchaser of assets or stock, any surviving corporation or limited liability company resulting from a merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer, or distributor.~~ The provisions of this section apply to all contracts now in effect which have no expiration date and are continuing contracts and all other contracts entered into, amended, or renewed after ~~June 30, 1987~~ July 31, 2003. Any contract in force and effect on ~~July 4, 1987~~ August 1, 2003, which by its terms will terminate on a date subsequent thereto is governed by the law as it existed before ~~July 4, 1987~~ August 1, 2003.

SECTION 3. AMENDMENT. Section 51-07-03 of the North Dakota Century Code is amended and reenacted as follows:

51-07-03. Failure to pay sum specified on cancellation of contract - Liability. ~~In the event that any~~ If a manufacturer, wholesaler, or distributor of ~~farm machinery, farm implements, and parts for farm machinery and farm implements, or~~

~~of automobiles, trucks, semitrailers, and parts for the same merchandise and tools covered under section 51-07-01, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to the dealer retailer as is required by section 51-07-01, or refuses to supply farm machinery, farm implements, and parts for farm machinery and farm implements or automobiles, trucks, or semitrailers, or parts for the same, covered merchandise or tools to any retailer of the products merchandise, who may have a retail sales contract dated after June 30, 1987 July 31, 2003, or a contract with no expiration date or a continuing contract in force or effect on July 4, 1987 August 1, 2003, with the manufacturer, wholesaler, or distributor, the manufacturer, wholesaler, or distributor shall be is liable in a civil action to be brought by the retailer for one hundred percent of the net cost of the farm implements, machinery, attachments, automobiles, and trucks, plus transportation charges that have been paid by the retailer and eighty-five percent of the current net price of parts, plus five percent for handling and loading plus freight charges that have been paid by the retailer the amounts provided under subsection 1 of section 51-07-03.~~ The obligations of any wholesaler, manufacturer, or distributor apply to any successor in interest or assignee of that wholesaler, manufacturer, or distributor. A successor in interest includes any purchaser of assets or stock, any surviving corporation or limited liability company resulting from a merger or liquidation, any receiver, or any trustee of the original wholesaler, manufacturer, or distributor.

SECTION 4. REPEAL. Section 51-07-02 of the North Dakota Century Code is repealed.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 436**SENATE BILL NO. 2037**

(Legislative Council)
(Family Law Committee)

**CREDIT CARD RECEIPT INFORMATION
RESTRICTIONS**

AN ACT to provide restrictions on the information a business may include on an electronically printed credit card receipt.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Restrictions on electronically printed credit card receipts.

Except as otherwise provided under this section, a person that accepts credit cards for the transaction of business and also electronically prints receipts for these credit card transactions may not print on the receipt provided to the customer more than the last five digits of the credit card account number nor print on the receipt provided to the customer the expiration date of the credit card. This section does not apply to a credit card transaction in which the sole means of recording the customer's credit card number is by handwriting or by an imprint or copy of the credit card. This section becomes operative on January 1, 2004, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions which is first put into use after December 31, 2003. This section becomes operative on January 1, 2007, with respect to any cash register or other machine or device that electronically prints receipts for credit card transactions which is first put into use before January 1, 2004.

Approved March 13, 2003
Filed March 13, 2003

CHAPTER 437

SENATE BILL NO. 2228

(Senators Trenbeath, Holmberg, Urlacher)
(Representatives Belter, Grosz)

UNLAWFUL SALES OR ADVERTISING PRACTICES

AN ACT to amend and reenact sections 44-04-18.12, 51-15-01, 51-15-04, 51-15-05, 51-15-06, 51-15-06.1, 51-15-07, 51-15-08, 51-15-10, and 51-15-11 of the North Dakota Century Code, relating to the confidentiality of agreements between a governmental agency in another jurisdiction and the attorney general and to unlawful sales or advertising practices; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 44-04-18.12 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.12. Cooperative investigations and litigation. A record acquired under a ~~written~~ an agreement between or involving a governmental agency in another jurisdiction and the attorney general is confidential, except for the purposes specified in the agreement, if the attorney general determines:

1. The record is necessary to further a civil investigation or litigation by the state;
2. The record can be obtained only by agreeing to keep the record confidential; and
3. The record is treated as confidential by the provider of the records.

SECTION 2. AMENDMENT. Section 51-15-01 of the North Dakota Century Code is amended and reenacted as follows:

51-15-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Advertisement" includes the attempt by publication, dissemination, solicitation, or circulation, oral or written, to induce, directly or indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise.
2. "Attorney general" means the attorney general of North Dakota or the attorney general's authorized delegate.
3. "Merchandise" means any objects, wares, goods, commodities, intangibles, real estate, charitable contributions, or services.
4. "Person" means any natural person or the person's legal representative, partnership, corporation, limited liability company, company, trust, business entity, or association, and any agent, employee, salesman,

partner, officer, director, member, stockholder, associate, trustee, or cestuique trust thereof.

5. "Sale" means any charitable solicitation, or any sale, offer for sale, or attempt to sell any merchandise for any consideration.

SECTION 3. AMENDMENT. Section 51-15-04 of the North Dakota Century Code is amended and reenacted as follows:

51-15-04. Powers of attorney general. When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or any of the provisions of by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, or when the attorney general believes it to be in the public interest ~~that an investigation should be made to ascertain to investigate~~ whether a person in fact has engaged in, is engaging in, or is about to engage in, any unlawful practice under this chapter or other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, the attorney general may:

1. Require that person to file, on forms the attorney general prescribes, a statement or report in writing, under oath or otherwise, of all the facts and circumstances concerning the sale or advertisement of merchandise by that person, as well as other data and information the attorney general may determine necessary.
2. Examine under oath any person in connection with the sale or advertisement of any merchandise.
3. Examine any merchandise or sample thereof, record, book, document, account, or paper as the attorney general may determine necessary.
4. Pursuant to an order of a district court impound any merchandise or sample thereof, record, book, document, account, or paper, ~~or sample of merchandise~~ material to that practice and retain the same in the attorney general's possession until the completion of all proceedings undertaken under this section or in the courts.

SECTION 4. AMENDMENT. Section 51-15-05 of the North Dakota Century Code is amended and reenacted as follows:

51-15-05. Subpoena - Hearing - Rules. To accomplish the objectives and to carry out the duties prescribed by this chapter or by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, the attorney general, in addition to other powers conferred upon the attorney general by this chapter, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, and prescribe forms and adopt rules as may be necessary.

SECTION 5. AMENDMENT. Section 51-15-06 of the North Dakota Century Code is amended and reenacted as follows:

51-15-06. Failure to supply information or obey subpoena. If any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general, the attorney general may, after notice, apply to a district court and, after hearing thereon, request an order:

1. Granting injunctive relief, restraining the sale or advertisement of any merchandise by such persons;
2. Vacating, annulling, or suspending the charter of a for-profit or nonprofit corporation or limited liability company created by or under the laws of this state or revoking or suspending the certificate of authority to do business in this state of a foreign corporation or limited liability company or revoking or suspending any other licenses, permits, or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and
3. Granting such other relief as may be required;

until the person files the statement or obeys the subpoena.

SECTION 6. AMENDMENT. Section 51-15-06.1 of the North Dakota Century Code is amended and reenacted as follows:

51-15-06.1. Assurance of discontinuance. The attorney general may accept an assurance of discontinuance of any act or practice the attorney general determines to be in violation of this chapter, or other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, from any person the attorney general alleges is engaging in, or has engaged in, the act or practice. The assurance of discontinuance must be in writing and must be filed with and is subject to the approval of the district court of the county in which the alleged violator resides or has as a principal place of business or in Burleigh County. An assurance of discontinuance may not be considered an admission of a violation. However, failure to comply with an assurance of discontinuance which has been approved by the district court is contempt of court.

SECTION 7. AMENDMENT. Section 51-15-07 of the North Dakota Century Code is amended and reenacted as follows:

51-15-07. Remedies - Injunction - Other relief - Receiver - Cease and desist orders - Civil penalties - Costs recoverable in adjudicative proceedings. Whenever it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter, or by other provisions of law, including chapter 50-22, 51-13, 51-14, 51-16.1, or 51-18, the attorney general may seek and obtain in an action in a district court an injunction prohibiting that person from continuing the unlawful practice or engaging in the unlawful practice or doing any act in furtherance of the unlawful practice after appropriate notice to that person. The notice must state generally the relief sought and be served at least ten days before the hearing of the action. The court may make an order or judgment as may be necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any money, or property that may have been acquired by means of any practice in this chapter, or in other provisions of law, including chapter 50-22, 51-13, 51-14, 51-16.1, or 51-18, declared to be unlawful, including the appointment of a receiver.

When it appears to the attorney general that a person has engaged in, or is engaging in, a practice declared to be unlawful by this chapter, or by other provisions of law, including chapter 50-22, 51-13, 51-14, 51-16.1, or 51-18, and that the person is about to conceal assets or oneself or leave the state, the attorney general may apply to the district court, ex parte, for an order appointing a receiver of the assets of that person. Upon a showing made by affidavit or other evidence that the person has

engaged in, or is engaging in, a practice declared to be unlawful by this chapter and that the person is about to conceal assets or oneself or leave the state, the court shall order the appointment of a receiver to receive the assets of the person.

When it appears to the attorney general that a person has engaged in, or is engaging in, a practice declared to be unlawful by this chapter, or by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, or by an order of the attorney general issued under this chapter, the attorney general, without notice and hearing, may issue any cease and desist order, which the attorney general deems necessary or appropriate in the public interest, including if a person fails or refuses to file a statement or report, or to obey a subpoena issued by the attorney general under this chapter, or under other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18. In addition to any other remedy authorized by this chapter, or by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, the attorney general may impose by order and collect a civil penalty against a person found in an adjudicative proceeding to have violated a cease and desist order issued pursuant to this section, in an amount not more than one thousand dollars for each violation. The attorney general may bring an action in district court to recover penalties under this section. A person aggrieved by an order issued under this section may request a hearing before the attorney general if a written request is made within ten days after the receipt of the order. An adjudicative proceeding under this section must be conducted in accordance with chapter 28-32, unless otherwise specifically provided herein. If the attorney general prevails in an adjudicative proceeding pursuant to this section, the attorney general may assess the nonprevailing person for all adjudicative proceeding and hearing costs, including reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action.

SECTION 8. AMENDMENT. Section 51-15-08 of the North Dakota Century Code is amended and reenacted as follows:

51-15-08. Powers of receiver. When a receiver is appointed by the court pursuant to this chapter, the receiver may sue for, collect, receive, or take into possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description, derived by means of any practice declared to be unlawful by this chapter, or by other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, including property with which the property has been mingled if it cannot be identified in kind because of the commingling, and sell, convey, and assign the property and hold and dispose of the proceeds under the direction of the court. Any person who has suffered damages as a result of the use or employment of any unlawful practices and submits proof to the satisfaction of the court that that person has in fact been damaged may participate with general creditors in the distribution of the assets to the extent that person has sustained out-of-pocket losses. The court has jurisdiction of all questions arising in these proceedings and may make orders and judgments therein as may be required.

SECTION 9. AMENDMENT. Section 51-15-10 of the North Dakota Century Code is amended and reenacted as follows:

51-15-10. Costs recoverable. In any action brought under the provisions of this chapter, or under other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18, the court shall award to the attorney general is entitled to recover costs, expenses, and attorney's fees incurred by the attorney general in the investigation and prosecution of such action. In any inquiry or investigation initiated under this chapter in which fraud is determined, the attorney general may request

~~and collect costs, expenses, and attorney's fees incurred by the attorney general in the inquiry or investigation~~ reasonable attorney's fees, investigation fees, costs and expenses of any investigation and action brought under this chapter, or under other provisions of law, including chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18. All attorney's fees, investigation fees, costs, and expenses, ~~and attorney's fees~~ received by the attorney general under this section must be deposited into the attorney general refund fund.

SECTION 10. AMENDMENT. Section 51-15-11 of the North Dakota Century Code is amended and reenacted as follows:

51-15-11. Civil penalties. The court may assess for the benefit of the state a civil penalty of not more than five thousand dollars for each violation of this chapter or for each violation of chapter 51-12, 51-13, 51-14, or 51-18. The penalty provided in this section is in addition to those remedies otherwise provided by this chapter or by chapter 50-22, 51-12, 51-13, 51-14, 51-16.1, or 51-18.

SECTION 11. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 4, 2003
Filed April 4, 2003

CHAPTER 438

SENATE BILL NO. 2255

(Senators Traynor, Krebsbach, Lindaas)
(Representatives Hawken, Kasper, Warner)

TELEPHONE SOLICITATIONS

AN ACT to create and enact chapter 51-26 of the North Dakota Century Code, relating to telephone solicitations; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 51-26 of the North Dakota Century Code is created and enacted as follows:

51-26-01. 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, regardless of its content.
6. "Subscriber" means a person who has subscribed to residential telephone services from a telephone company 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 solicitation" means any voice 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 51-26-02.
- 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.

51-26-02. Use of prerecorded or synthesized voice messages. A caller may not use or connect to a telephone line an automatic dialing-announcing device unless the subscriber has knowingly requested, consented to, permitted, or authorized receipt of the message or the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered. This section and section 51-26-05 do not apply to messages from school districts to students, parents, or employees, messages to subscribers with whom the caller has a current business relationship, or messages advising employees of work schedules.

51-26-03. Message requirements. When the message is immediately preceded by a live operator, the operator must disclose at the outset of the message:

1. The name of the business, firm, organization, association, partnership, or entity for which the message is being made;
2. The purpose of the message;
3. The identity or kinds of goods or services the message is promoting; and

4. If applicable, the fact that the message intends to solicit payment or commitment of funds.

51-26-04. Requirements on automatic dialing-announcing devices. A caller may not use an automatic dialing-announcing device unless the device is designed and operated so as to disconnect within ten seconds after termination of the telephone call by the subscriber. A caller may not use an automatic dialing-announcing device that uses a random or sequential number generator unless the equipment excludes calls to the following telephone numbers:

1. Emergency telephone numbers, including 911, of any hospital, medical physician, health care facility, ambulance or emergency medical provider, fire protection facility, or law enforcement agency.
2. Any guest room or patient room of a hospital, health care facility, elderly care home, or similar establishment.
3. A paging service, a cellular telephone service, a specialized mobile radio service, or any service for which the called party is charged for the call.
4. The telephone numbers maintained on a do-not-call list established pursuant to section 51-26-09.

51-26-05. Time of day limit. A caller may not use an automatic dialing-announcing device nor make any telephone solicitation before eight a.m. or after nine p.m. at the telephone subscriber's location.

51-26-06. Prohibited telephone solicitations. A caller may not make or cause to be made any telephone solicitation to the telephone line of any subscriber in this state who, for at least ninety days before the date the call is made, has been on the do-not-call list established and maintained or used by the attorney general under section 51-26-09 or the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 310.

51-26-07. Identification by caller. Any caller who makes a telephone solicitation to a subscriber in this state shall immediately and clearly state at the beginning of the call the caller's true first and last name, the caller's telephone number, the caller's city and state of location, and the name of the business on whose behalf the telephone solicitation is made.

51-26-08. Interference with caller identification. A caller who makes a telephone solicitation to a subscriber in this state may not knowingly use any method to block or otherwise deliberately circumvent the subscriber's use of a caller identification service.

51-26-09. Establishment of do-not-call list - Federal trade commission do-not-call registry.

1. The attorney general shall establish and maintain a list of telephone numbers of subscribers who object to receiving telephone solicitations. The attorney general may fulfill the requirements of this section by contracting with an agent for the establishment and maintenance of the list or by using the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of

Federal Regulations, part 310. The attorney general may adopt rules governing the establishment, distribution, and operation of the do-not-call list, as the attorney general deems necessary and appropriate to fully implement the provisions of this chapter, in addition to the following provisions:

- a. Any subscriber may contact the attorney general or the attorney general's agent and give notice, in the manner prescribed by the attorney general, that the subscriber objects to receiving telephone solicitations. The attorney general shall add the telephone number of any subscriber who gives notice of objection to the list maintained pursuant to this section.
 - b. Any notice given by a subscriber under this section is effective for five years unless revoked by the subscriber. Any subsequent notices given by the same subscriber related to a different telephone number are separate from the original notice.
 - c. The attorney general shall allow subscribers to give notice under this section by mail, telephone, or electronically.
 - d. The attorney general shall establish the procedures by which a person wishing to make telephone solicitations may obtain access to the list. To the extent practicable, those procedures shall allow for access to paper or electronic copies of the list.
 - e. The attorney general may include in the list established under this section subscribers who live in North Dakota and are included in the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 310. The attorney general may provide to the federal trade commission the telephone numbers of North Dakota subscribers who are in the attorney general's do-not-call list or who have otherwise notified the attorney general of the subscriber's objection to receiving telephone solicitations for inclusion in the national do-not-call registry.
 - f. A person or entity desiring to make telephone solicitations shall pay a fee, payable to the attorney general, for access to, or for paper or electronic copies of, the list established under section 51-26-09. The fee for acquisition of the list may not exceed two hundred dollars per quarter, or eight hundred dollars per year.
2. Notwithstanding any other provision of this chapter, the attorney general may designate the national do-not-call registry established and maintained by the federal trade commission under title 16, Code of Federal Regulations, part 61, as the state do-not-call list.

51-26-10. Release of information. Information contained in the list established under section 51-26-09 may not be used for any purposes except compliance with this chapter or in a proceeding or action under this chapter or chapter 51-15. The information contained in the list is an exempt record as defined in section 44-04-17.1.

51-26-11. Private enforcement. Any person who receives a telephone solicitation or message in violation of this chapter may bring an action to enjoin such

violation, or for damages, or both. The court may award the plaintiff the plaintiff's actual damages or damages up to two thousand dollars for each violation, whichever is greater. The court may award the plaintiff costs, expenses, and reasonable attorney's fees. This section shall not limit any other claims the person may have against the caller.

51-26-12. Limitation of actions. No action or proceeding may be brought under this chapter:

1. More than one year after the person bringing the action knew or should have known of the alleged violation; or
2. More than one year after the termination of any proceeding or action by the attorney general, whichever is later.

51-26-13. Powers of the attorney general - Remedies - Injunction - Other relief. When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter, the attorney general, in enforcing this chapter, has all powers provided in this chapter or chapter 51-15, and may seek all remedies in this chapter or chapter 51-15.

51-26-14. Cease and desist orders. When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or by any rule or order of the attorney general issued under this chapter, the attorney general, without notice and hearing, may issue any cease and desist order which the attorney general deems necessary or appropriate in the public interest, including if any person fails or refuses to file any statement or report, or obey any subpoena issued by the attorney general under this chapter or chapter 51-15. A person aggrieved by an order issued under this section may request a hearing before the attorney general if a written request is made within ten days after the receipt of the order. An adjudicative proceeding under this section must be conducted in accordance with chapter 28-32, unless otherwise specifically provided herein.

51-26-15. Civil penalties in an adjudicative proceeding. When it appears to the attorney general that a person has engaged in, or is engaging in, any practice declared to be unlawful by this chapter or by any rule or order of the attorney general issued under this chapter, the attorney general may impose by order and collect a civil penalty against any person found in an adjudicative proceeding to have violated any provision of this chapter, or any rule or order adopted under this chapter, in an amount not more than two thousand dollars for each violation of this chapter or any rule or order adopted under this chapter. The attorney general may bring an action in district court to recover penalties under this section.

51-26-16. Costs recoverable in adjudicative proceeding - Hearing costs. If the attorney general prevails in an adjudicative proceeding pursuant to section 51-26-14 or 51-26-15, the attorney general may assess the nonprevailing person for all adjudicative proceeding and hearing costs, including reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action brought under the provisions of this chapter.

51-26-17. Civil penalties in court proceeding. The court may award the attorney general civil penalties of not more than two thousand dollars per violation of this chapter. A violation of this chapter constitutes a violation of chapter 51-15 and the court may award civil penalties under section 51-15-11.

51-26-18. Costs recoverable in court proceeding. The attorney general is entitled to an award of reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action brought under the provisions of this chapter.

51-26-19. Separate violations - Nonexclusive remedies and penalties. For each remedy or penalty under this chapter or chapter 51-15, or otherwise provided by law, each telephone solicitation or message shall constitute a separate violation for purposes of an adjudicative proceeding or an action in district court. 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 in chapter 51-15, or otherwise provided by law.

51-26-20. Caller identification service nonliability. No provider of caller identification service shall be held liable for violations of this chapter committed by other persons or entities.

51-26-21. Disposition of fees, penalties, and recoveries. All fees, penalties, and recoveries of attorney's fees, investigation fees, costs, and expenses collected pursuant to this chapter shall be retained by the attorney general for enforcement of this chapter, including to pay costs, expenses, and attorney's fees and salaries incurred in the operation of the attorney general's consumer protection and antitrust division. However, the attorney general may deposit any excess funds not required for enforcement of this chapter in the attorney general refund fund under section 54-12-18.

51-26-22. Venue. The attorney general or a plaintiff in a private enforcement action may bring an action pursuant to this chapter in either the county of the telephone subscriber's residence or Burleigh County.

Approved April 16, 2003
Filed April 17, 2003

CHAPTER 439

HOUSE BILL NO. 1388

(Representatives Warner, Hawken, N. Johnson)

(Senators Andrist, Krauter)

COMMERCIAL ELECTRONIC MAIL SOLICITATION

AN ACT to create and enact chapter 51-27 of the North Dakota Century Code, relating to commercial electronic mail solicitation; to provide a penalty; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 51-27 of the North Dakota Century Code is created and enacted as follows:

51-27-01. Definitions. In this chapter, unless 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. "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. "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. "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.

51-27-02. False or misleading messages prohibited.

1. A person may not initiate the transmission, conspire with another to initiate the transmission, or assist the transmission of a commercial electronic mail message from a computer located in this state or to an electronic mail address that the sender knows, or has reason to know, is held by a resident of this state that:
 - a. Uses a third-party's internet domain name without permission of the third party or otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of a commercial electronic mail message; or
 - b. Contains false or misleading information in the subject line.
2. For purposes of this section, a person knows that the intended recipient of a commercial electronic mail message is a resident of this state if that information is available, upon request, from the registrant of the internet domain name contained in the recipient's electronic mail address.

51-27-03. Unpermitted or misleading electronic mail - Violation of consumer protection law.

1. It is a violation of chapter 51-15 to conspire with another person to initiate the transmission or to initiate the transmission of a commercial electronic mail message that:
 - a. Uses a third-party's internet domain name without permission of the third party or otherwise misrepresents or obscures any information in identifying the point of origin or the transmission path of a commercial electronic mail message; or
 - b. Contains false or misleading information in the subject line.
2. It is a violation of chapter 51-15 to assist in the transmission of a commercial electronic mail message if 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 act or practice that violates chapter 51-15.

51-27-04. Subject disclosure - Violation of consumer protection law.

1. The subject line of a commercial electronic mail message must include "ADV" as the first characters. If the message contains information that consists of material of a sexual nature that may only be viewed by an individual eighteen years of age or older, the subject line of the message must include "ADV-ADULT" as the first characters.
2. For purposes of this section, a commercial electronic mail message does not include a message if the recipient has consented to receive or has solicited electronic mail messages from the initiator, from an organization using electronic mail to communicate exclusively with its

members, from an entity which uses electronic mail to communicate exclusively with its employees or contractors, or if there is a business or personal relationship between the initiator and the recipient.

3. For purposes of this section, a business relationship means a prior or existing relationship formed between the initiator and the recipient, with or without an exchange of consideration, on the basis of an inquiry, application, purchase, or services offered by the initiator or an affiliate or agent of the initiator. "Affiliate" means a person that directly or indirectly controls, is controlled by, or is under common control with a specified person.
4. It is a violation of chapter 51-15 to conspire with another person to initiate the transmission or to initiate the transmission of a commercial electronic mail message that violates this section.

51-27-05. Toll-free number.

1. A sender initiating the transmission of a commercial electronic mail message shall establish a toll-free telephone number, a valid sender-operated return electronic mail address, or another easy-to-use electronic method that the recipient of the commercial electronic mail message may call or access by electronic mail or other electronic means to notify the sender not to transmit any further unsolicited commercial electronic mail messages. The notification process may include the ability for the commercial electronic mail messages recipient to direct the initiator to transmit or not transmit particular commercial electronic mail messages based upon products, services, divisions, organizations, companies, or other selections of the recipient's choice.
2. A commercial electronic mail message must include a statement informing the recipient of a toll-free telephone number that the recipient may call, or a valid return address to which the recipient may write or access by electronic mail or another electronic method established by the initiator, notifying the sender not to transmit to the recipient any further unsolicited commercial electronic mail messages to the electronic mail address specified by the recipient, and explaining the manner in which the recipient may specify what commercial electronic mail messages the recipient does and does not want to receive.

51-27-06. Violations - Damages.

1. Damages to the recipient of a commercial electronic mail message sent in violation of this chapter are five hundred dollars, or actual damages, whichever is greater.
2. Damages to an interactive computer service resulting from a violation of this chapter are one thousand dollars, or actual damages, whichever is greater.

51-27-07. Blocking of commercial electronic mail by interactive computer service - Immunity from liability.

1. An interactive computer service may block the receipt or transmission through its service of any commercial electronic mail that it reasonably believes is, or will be, sent in violation of this chapter.

2. An interactive computer service may not be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any commercial electronic mail which it reasonably believes is, or will be, sent in violation of this chapter.

51-27-08. Nonexclusive causes of action, remedies, and penalties. 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 in chapter 51-15 or otherwise provided by law.

51-27-09. Relationship to federal law. If any federal law is enacted that regulates false, misleading, or unsolicited commercial electronic mail messages, but does not preempt state law on the subject, the federal law supersedes any conflicting provision of this chapter.

SECTION 2. EXPIRATION DATE. The governor shall certify to the legislative council the effective date of any federal legislation that preempts state regulation of false, misleading, or unsolicited commercial electronic mail messages. This Act becomes ineffective upon the effective date contained in the certification of federal legislation that preempts state regulation of false, misleading, or unsolicited commercial electronic mail messages.

Approved April 11, 2003
Filed April 11, 2003

SOCIAL SECURITY

CHAPTER 440

HOUSE BILL NO. 1096

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

UNEMPLOYMENT COMPENSATION DEFINITIONS AND BENEFITS

AN ACT to create and enact a new subdivision to subsection 31 of section 52-01-01 and a new subdivision to subsection 2 of section 52-04-07 of the North Dakota Century Code, relating to the definition of wages and to payment of unemployment compensation benefits; to amend and reenact section 52-01-02, subdivision b of subsection 2 of section 52-04-07, sections 52-04-09 and 52-04-10, subsection 8 of section 52-06-02, and subdivision d of subsection 2 of section 52-06-04 of the North Dakota Century Code, relating to unemployment compensation records and payment of and eligibility for unemployment compensation benefits; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 31 of section 52-01-01 of the North Dakota Century Code is created and enacted as follows:

Payments that qualify as supplemental unemployment compensation paid by an employer to former employees if those payments are paid pursuant to a plan that meets the following requirements:

- (1) Benefits are paid only to unemployed former employees who are laid off by the employer;
- (2) Eligibility for benefits depends on meeting prescribed conditions after termination;
- (3) The amount of weekly benefits payable is based upon state unemployment benefits, other compensation allowable under state law, and the amount of regular weekly pay of that former employee;
- (4) The duration of the benefits is affected by the fund level and employee seniority;
- (5) The right to benefits does not accrue until a prescribed period after termination;
- (6) Benefits are not attributable to the performance of particular services;

- (7) No employee has any right to the benefits until qualified and eligible to receive benefits; and
- (8) Benefits may not be paid in a lump sum.

SECTION 2. AMENDMENT. Section 52-01-02 of the North Dakota Century Code is amended and reenacted as follows:

52-01-02. Employing unit to keep records - Reports of employing unit - ~~Inspection~~ Public inspection prohibited - Exception - Penalty. ~~Each employing unit shall keep true and accurate work records containing such information as the bureau may prescribe. The records must be open to inspection and may be copied by the bureau or its authorized representatives at any reasonable time as often as may be necessary. The bureau or the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the bureau, or the chairman, deems necessary for the effective administration of the North Dakota Unemployment Compensation Law. In addition, the bureau or the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the workers compensation bureau deems necessary for effective administration of the North Dakota Workers' Compensation Law set forth in title 65. Such reports must be provided to the workers compensation bureau by the bureau or the chairman of any appeal tribunal. All records, including electronic records as defined in section 9-16-01, of the employers doing business in this state showing or reflecting in any way upon the amount of wage expenditure by or upon payments for services performed for those employers are always open for inspection by employees of job service North Dakota who are assigned responsibility to do so for the purpose of ascertaining the correctness of the reports, wage expenditures, the number of employees, and any other information necessary for the agency to administer this title. An employer who refuses to submit the employer's records, including electronic records as defined in section 9-16-01, for inspection by an identified and assigned employee of job service North Dakota is subject to a civil penalty of five hundred dollars for each offense. The agency shall collect the penalty by civil action in the name of the state and shall deposit any penalty collected under this section to the credit of the fund established by section 52-04-22. Information ~~thus~~ obtained pursuant to this section may not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the employing unit's identity, but any claimant or the claimant's legal representative at a hearing before ~~an appeal tribunal~~ a hearing officer or the ~~bureau~~ agency must be supplied with information from such records to the extent necessary for the proper presentation of the ~~claim~~ appeal.~~

SECTION 3. AMENDMENT. Subdivision b of subsection 2 of section 52-04-07 of the North Dakota Century Code is amended and reenacted as follows:

- b. With benefits paid to an individual who left, during the base period, either:
 - (1) Left the employment of ~~the~~ a base-period employer voluntarily without good cause or with good cause not involving fault on the part of the base-period employer; or
 - (2) ~~who~~ Who was discharged from employment by the base-period employer for misconduct.

SECTION 4. A new subdivision to subsection 2 of section 52-04-07 of the North Dakota Century Code is created and enacted as follows:

With benefits paid to an individual who is currently employed part time with that employer when the hiring agreement between the individual and the employer has not changed since the individual commenced work for that employer. This subdivision does not apply to an employee of a temporary help firm.

¹⁹⁴ **SECTION 5. AMENDMENT.** Section 52-04-09 of the North Dakota Century Code is amended and reenacted as follows:

52-04-09. Classification of employers to determine contributions - Regulations governing. An employer's rate for a calendar year must be determined on the basis of the employer's experience with contribution payments and benefit charges as of October first of the preceding year. If, when such determination is to be made, an employer has failed to file a required report or filed an insufficient report, ~~the bureau~~ job service North Dakota shall notify the employer thereof by certified mail addressed to the employer's last-known address. Unless the employer files the report or a sufficient report within fifteen days after mailing of the notice, the employer's rate for the following calendar year may not be less than the negative employer maximum rate. ~~For employers identified as belonging to industry group number 464, highway and street construction, except elevated highways, for the effective period set forth in section 52-04-05, the employer's rate for the following calendar year may not be less than the negative employer maximum rate plus one and one-half percent.~~ If, at any time, an employer has failed to file a required report or filed an insufficient report, ~~the bureau~~ job service North Dakota may, at any time, estimate the wage information required by the report on the basis of reasonably available evidence. ~~The bureau~~ Job service North Dakota shall notify the employer of the estimate by certified mail addressed to the employer's last-known address. Unless the employer files the report or a sufficient report within fifteen days after the mailing of the notice, the estimate becomes final for all purposes, except that if the amount of estimated wages is less than the actual wages, the bureau may reconsider the estimate.

SECTION 6. AMENDMENT. Section 52-04-10 of the North Dakota Century Code is amended and reenacted as follows:

52-04-10. Contributions for ensuing year - Notification - Review. The bureau shall ~~notify~~ promptly notify each employer of the employer's rate of contributions as determined for each ensuing year ~~not later than~~ by the end of the first full week of December first, but not later than December tenth, of the preceding year. Such contributions must be computed pursuant to the provisions of this chapter. Such determination becomes conclusive and binding upon the employer unless, within fifteen days after the mailing of the notice thereof to the employer's last-known address, or in the absence of the mailing, within fifteen days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the employer's reasons therefor. If the bureau grants such review, the employer must be notified promptly thereof and must be granted an opportunity for a hearing, but no employer shall have standing, in any proceeding

¹⁹⁴ Section 52-04-09 was also amended by section 1 of House Bill No. 1097, chapter 442.

involving the employer's rate of contributions or contribution liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to the provisions of chapter 52-06, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute the services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination, or decision or to any other proceeding under this chapter in which the character of these services was determined. For purposes of this section, an employer was not a party to the determination if notice of the determination and the employer's right to appeal the determination was not mailed or personally delivered to the employer. The employer must be notified promptly of the bureau's denial of the employer's application, or of the bureau's redetermination, both of which become final unless within thirty days after the mailing of notice thereof to the employer's last-known address or in the absence of mailing, within thirty days after delivery of such notice, a petition for judicial review is filed in the district court of Burleigh County. Any proceeding before the court under the terms of this section must be had in accordance with the provisions in chapter 52-06 with respect to court review.

SECTION 7. AMENDMENT. Subsection 8 of section 52-06-02 of the North Dakota Century Code is amended and reenacted as follows:

8. For the week in which the individual has filed an otherwise valid claim for benefits and:
 - a. ~~Through the date and for~~ For one year from the date on which a determination is made that such individual has made a false statement for the purposes of obtaining benefits to which the individual was not lawfully entitled. Provided, however, that this disqualification does not apply to cases in which it appears to the satisfaction of the bureau job service North Dakota that the said false statement was made by reason of a mistake or misunderstanding of law or of facts without fraudulent intent; or
 - b. For one year when the individual has been separated from the individual's last employment because of gross misconduct in connection with work.

SECTION 8. AMENDMENT. Subdivision d of subsection 2 of section 52-06-04 of the North Dakota Century Code is amended and reenacted as follows:

- d. ~~This provision does not apply if, at the time of the claim, such ownership interest has been ceded.~~ The exceptions in subdivisions a, b, and c do not apply if, at the time of making the claim, the ownership interest described in those subdivisions has been ceded. An ownership interest is ceded within the meaning of this subdivision if:
 - (1) The appropriate official of the partnership, corporation, or limited liability company has officially filed articles of dissolution, a notice of intent to dissolve, or a notice of termination with the secretary of state, and presents proof of that filing to job service North Dakota;
 - (2) The appropriate official of the corporation has received a certificate of dissolution from the secretary of state;

- (3) The partnership, corporation, or limited liability company has sold or otherwise transferred to uninvolved third parties substantially all the assets of the partnership, corporation, or limited liability company with an intent to end the business operation and terminate or dissolve the partnership, corporation, or limited liability company. As used in this subdivision, "uninvolved third parties" excludes all relatives of the partners, directors, members of a board of governors, or substantial stockholders or holders of a substantial membership interest in a limited liability company; and excludes any corporation, limited liability company, or partnership, in which the relative holds a one-fourth or greater ownership interest. As used in this paragraph, "relative" means the following persons whether related by blood, marriage, or adoption: grandparents, parents, siblings, spouses, children, grandchildren, uncles, aunts, and first cousins; or
- (4) Substantially all of the assets of the partnership, corporation, or limited liability company have been legally seized by creditors rendering the business incapable of further operation.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 441

HOUSE BILL NO. 1115

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

INFORMATION SHARING WITH CENSUS BUREAU

AN ACT to create and enact a new subsection to section 57-38-57 of the North Dakota Century Code, relating to provision of income tax return information to the United States census bureau; to amend and reenact section 52-01-03 of the North Dakota Century Code, relating to the provision of unemployment insurance data to the United States census bureau; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-01-03 of the North Dakota Century Code is amended and reenacted as follows:

52-01-03. Disclosure of information.

1. Except as otherwise provided in this section, information obtained from any employing unit or individual pursuant to the administration of the North Dakota Unemployment Compensation Law and determinations as to the benefit rights of any individual must be held confidential and may not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or claimant's legal representative must be supplied with information from the records of the ~~job~~ unemployment insurance division, to the extent necessary for the proper presentation of the claimant's claim in any proceeding under the North Dakota Unemployment Compensation Law with respect to the claim.
2. Subject to restrictions as the bureau by rule may prescribe, the information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of any unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon a request, the bureau shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employment status of each recipient of benefits and the recipient's rights to further benefits under the North Dakota Unemployment Compensation Law. The bureau may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association, rendered pursuant to the North Dakota Unemployment Compensation Law, and in connection with the request, may transmit any report or return to the comptroller of the currency of

the United States as provided in subsection c of section 3305 of the federal Internal Revenue Code. The bureau shall request and exchange information for purposes of income and eligibility verification to meet the requirements of section 1137 of the Social Security Act. Job service North Dakota may enter into memoranda of understanding with the United States census bureau to furnish unemployment insurance data to the census bureau and for sharing of information with job service North Dakota.

3. The bureau may provide the workers compensation bureau, the ~~state commissioner of labor~~ commissioner, the department of commerce, the state tax commissioner, and the North Dakota occupational information coordinating committee with information obtained pursuant to the administration of the North Dakota Unemployment Compensation Law. Any information so provided may be used only for the purpose of administering the duties of the workers compensation bureau, the ~~state commissioner of labor~~ commissioner, the state department of commerce, the state tax commissioner, and the North Dakota occupational information coordinating committee.
4. The bureau may provide any state agency or a private entity with the names and addresses of employing units for the purpose of jointly publishing or distributing publications or other information as provided in section 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.
5. Whenever the bureau obtains information on the activities of a contractor doing business in this state of which officials of the secretary of state, workers compensation bureau, or the state tax commissioner may be unaware and that may be relevant to duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties.
6. The bureau shall request and exchange information as required of ~~the bureau~~ it under federal law with any specified governmental agencies. Any information so provided may be used only for the purpose of administering the duties of such governmental agencies.

¹⁹⁵ **SECTION 2.** A new subsection to section 57-38-57 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner, upon written request from the secretary of commerce of the United States, may furnish officers and employees of the bureau of census, an individual taxpayer's identification number and county of residence as reported on the individual's return. However, any information obtained may be used only for the purpose of establishing migration methodologies in estimating the annual shifts in the state's population. A person who receives return information under this subsection may not disclose the return information to any person

¹⁹⁵ Section 57-38-57 was also amended by section 5 of House Bill No. 1243, chapter 454.

other than the taxpayer to whom it relates except in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

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

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 442

HOUSE BILL NO. 1097

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

UNEMPLOYMENT INSURANCE TAX RATE SETTING

AN ACT to amend and reenact section 52-04-09 of the North Dakota Century Code, relating to the setting of unemployment insurance tax rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁶ **SECTION 1. AMENDMENT.** Section 52-04-09 of the North Dakota Century Code is amended and reenacted as follows:

52-04-09. Classification of employers to determine contributions - Regulations governing. An employer's rate for a calendar year must be determined on the basis of the employer's experience with contribution payments and benefit charges as of October first of the preceding year. If when such determination is to be made, an employer has failed to file a required report or filed an insufficient report, ~~the bureau~~ job service North Dakota shall notify the employer thereof by certified mail addressed to the employer's last-known address. Unless the employer files the report or a sufficient report within fifteen days after mailing of the notice, the employer's rate for the following calendar year ~~may not be less than the negative employer maximum rate.~~ For employers identified as belonging to industry group number 161, highway and street construction, except elevated highways, for the effective period set forth in section 52-04-05, the employer's rate for the following calendar year may not be less than the negative employer maximum rate plus one and one-half percent. must be set as follows:

1. Experience-rated positive employers must be assigned the negative employer minimum rate.
2. Experience-rated negative employers must be assigned the negative employer maximum rate.
3. New positive nonconstruction employers must be assigned the negative employer minimum rate.
4. New positive construction employers must be assigned the negative employer maximum rate.
5. New negative employers must be assigned the negative employer maximum rate.

¹⁹⁶ Section 52-04-09 was also amended by section 5 of House Bill No. 1096, chapter 440.

If, at any time, an employer has failed to file a required report or filed an insufficient report, ~~the bureau~~ job service North Dakota may, at any time, estimate the wage information required by the report on the basis of reasonably available evidence. ~~The bureau~~ Job service North Dakota shall notify the employer of the estimate by certified mail addressed to the employer's last-known address. Unless the employer files the report or a sufficient report within fifteen days after the mailing of the notice, the estimate becomes final for all purposes, except that if the amount of estimated wages is less than the actual wages, ~~the bureau~~ job service North Dakota may reconsider the estimate.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 443

HOUSE BILL NO. 1098

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

UNEMPLOYMENT INSURANCE BENEFIT DETERMINATION FINALITY

AN ACT to amend and reenact section 52-06-21 of the North Dakota Century Code, relating to unemployment insurance benefit determinations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 52-06-21 of the North Dakota Century Code is amended and reenacted as follows:

52-06-21. Conclusiveness of determinations and decisions. ~~Except insofar as reconsideration of any determination is had under the provisions of the North Dakota Unemployment Compensation Law, any Any right, fact, or matter in issue directly passed upon or necessarily involved in a determination or redetermination which has become final, or ~~in~~ which has become final following a decision or appeal under the North Dakota Unemployment Compensation Law which has become final, is conclusive for all the purposes of the North Dakota Unemployment Compensation Law as between the bureau, the claimant, and all employing units who had notice of such determination, redetermination, or decisions. ~~Subject to appeal proceedings and judicial review as provided in the North Dakota Unemployment Compensation Law, any Any determination, redetermination, or decision as to rights to benefits is conclusive for all the purposes of the North Dakota Unemployment Compensation Law and is not which has become final and conclusive in accordance with this section is not subject to collateral attack by any employing unit, irrespective of notice. As used in this section, "collateral attack by any employing unit" includes a collateral attack by a reimbursing or contributory base period employer on a final and conclusive determination of benefits involving a different employer provided that an employer challenging the propriety of charging any benefits paid as a result of a final determination, redetermination, or decision is entitled to receive data and information from job service North Dakota concerning the monetary basis for the claimant's right to the benefits at issue. Provided further, that at any hearing on the challenge, job service North Dakota is not required to call or subpoena the claimant or the claimant's last or most recent employer as a witness.~~~~

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 444**HOUSE BILL NO. 1099**

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

**SHARED WORK UNEMPLOYMENT COMPENSATION
REPEAL**

AN ACT to repeal chapter 52-06.1 of the North Dakota Century Code, relating to shared work unemployment compensation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 52-06.1 of the North Dakota Century Code is repealed.

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

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 445**SENATE BILL NO. 2109**

(Education Committee)

(At the request of the State Board of Higher Education)

WORKFORCE TRAINING FUNDS DISTRIBUTION

AN ACT to repeal section 52-08-12 of the North Dakota Century Code, relating to distribution of workforce training funds by the state board for vocational and technical education to state board of higher education institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁷ **SECTION 1. REPEAL.** Section 52-08-12 of the North Dakota Century Code is repealed.

Approved March 21, 2003

Filed March 21, 2003

¹⁹⁷ Section 52-08-12 was also amended by section 91 of House Bill No. 1183, chapter 138.

CHAPTER 446

HOUSE BILL NO. 1063

(Industry, Business and Labor Committee)
(At the request of Job Service North Dakota)

OASIS ADMINISTRATION

AN ACT to create and enact a new section to chapter 52-09 and a new section to chapter 52-10 of the North Dakota Century Code, relating to administration of the old-age and survivor insurance system and authority of the executive director of job service North Dakota; to amend and reenact section 52-09-03, subsection 4 of section 52-09-07, and subsections 6 and 9 of section 52-09-20 of the North Dakota Century Code, relating to administration of the old-age and survivor insurance system, primary insurance benefits under the old-age and survivor insurance system, authority of the executive director of job service North Dakota, and legislative appropriations for the expenses of administration; to repeal section 52-09-04 of the North Dakota Century Code, relating to the previous authority of the employment security bureau; and to provide for implementation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 52-09 of the North Dakota Century Code is created and enacted as follows:

Administration of chapter - Definition. The retirement board responsible for managing the public employees retirement system under chapter 54-52 shall administer this chapter and the retirement system described in this chapter. The state treasurer shall manage the old-age and survivors' insurance trust fund as provided in section 52-09-06. As used in this chapter, the terms "bureau" and "agency" mean the retirement board of the public employees retirement system, or that board's designated staff.

SECTION 2. AMENDMENT. Section 52-09-03 of the North Dakota Century Code is amended and reenacted as follows:

52-09-03. Administration. ~~The agency charged with administering the provisions of the North Dakota Unemployment Compensation Law~~ is vested with authority to administer the old-age and survivor insurance system. Expenses for the administration of the system must be within the limits of legislative appropriation ~~and funds must be expended by warrant checks prepared by the office of management and budget after approval by the office of the budget.~~

SECTION 3. AMENDMENT. Subsection 4 of section 52-09-07 of the North Dakota Century Code is amended and reenacted as follows:

4. The legislative assembly may appropriate moneys from this the old-age and survivors' fund to be used by the bureau for the purposes of administration of this chapter and may also appropriate from this fund funds for the administration of chapter 52-10. Appropriations from the old-age and survivors' fund for the expenses of administration of chapter 52-10 must be appropriated to job service North Dakota. The bureau and job service North Dakota shall maintain complete and accurate

records of all appropriations under this subsection and expenditures made from those appropriations. ~~All disbursements for administrative expenses from the fund must be paid by warrant checks prepared by the bureau.~~

SECTION 4. AMENDMENT. Subsections 6 and 9 of section 52-09-20 of the North Dakota Century Code are amended and reenacted as follows:

52-09-20. Definitions. When used in this chapter:

6. "Employment" means any service performed after June 30, 1947, under an employer-employee relationship, under the provisions of this chapter, except:
 - a. Any service performed in the employ of any employer which has as of July 1, 1947, its own retirement plan.
 - b. Any service performed by an employee of the legislative assembly during a legislative session.
 - c. ~~The director of job service North Dakota is hereby authorized to enter into an agreement with the federal security agency, social security administration bureau of old-age and survivors' insurance to provide coverage for national guard state civilian employees under the old-age and survivors' insurance provisions of the Social Security Act as provided in section 218 of the Social Security Act amendments of 1950 [Pub. L. 81-734; 64 Stat. 514; 42 U.S.C. 418]. For the purposes of the agreement, the director is authorized to make such collections, contributions, and reports as may be required by the federal agency under the terms of the agreement.~~
 - d. Any service performed by an undergraduate student while regularly attending a public school, college, or university for such public school, college, or university.
9. "Primary insurance benefit" means the sum of the following:
 - a. (1) Fifty percent of the amount of an individual's average monthly wage if the average monthly wage does not exceed seventy-five dollars; or
 - (2) If the average monthly wage exceeds seventy-five dollars, thirty-seven dollars and fifty cents, plus fifteen percent of the amount by which the average monthly wage exceeds seventy-five dollars and does not exceed two hundred fifty dollars;
 - b. One percent of the amount computed under subdivision a, multiplied by the number of years in which two hundred dollars or more of wages were paid to the individual; and
 - c. (1) Effective August 1, ~~2004~~ 2003, eight hundred ~~twenty-six~~ seventy-nine dollars and ~~sixty-four~~ ninety-six cents; or
 - (2) Effective August 1, ~~2002~~ 2004, eight hundred ~~fifty-three~~ nine hundred ~~six~~ sixty-two cents.

SECTION 5. A new section to chapter 52-10 of the North Dakota Century Code is created and enacted as follows:

Authority of executive director - Social security coverage for national guard employees. The executive director of job service North Dakota may enter into an agreement with the federal security agency, social security administration bureau of old-age and survivor insurance to provide coverage for national guard state civilian employees under the old-age and survivor insurance provisions of the Social Security Act as provided in section 218 of the Social Security Act amendments of 1950 [Pub. L. 81-734; 64 Stat. 514; 42 U.S.C. 418]. For purposes of the agreement, the executive director may make such collections, contributions, and reports as may be required by the federal agency under the terms of the agreement.

SECTION 6. REPEAL. Section 52-09-04 of the North Dakota Century Code is repealed.

SECTION 7. IMPLEMENTATION. The old age and survivors' insurance trust fund is an identified funding source for the public employees retirement system, subject to the appropriation provided in Senate Bill No. 2024.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 447**HOUSE BILL NO. 1064**

(Government and Veterans Affairs Committee)
(At the request of Job Service North Dakota)

JOB SERVICE RETIREMENT PLAN TRANSFERRED TO PERS

AN ACT to amend and reenact subsection 1 of section 52-11-01 and subsection 7 of section 54-52-04 of the North Dakota Century Code, relating to the retirement plan for employees of job service North Dakota and authority of the public employees retirement system board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 52-11-01 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Job service North Dakota and the~~ The North Dakota national guard ~~are~~ is authorized ~~either jointly or severally~~ to establish an employee retirement ~~programs~~ program by contract with an insurance company, state or national bank and trust company, or an investment company, authorized under the law to do business in this state, the state investment board, or the North Dakota public employees retirement system. Except for a retirement program established under chapter 54-52, the North Dakota national guard shall prepare specifications of the terms of the retirement program which must be submitted to not less than three companies or agencies with a request for bids upon the retirement program contracts. After the submission of at least three bids, the adjutant general shall compare the bids, and with the approval of the governor, shall execute a contract for the retirement program with the company or agency submitting the lowest and best bid. ~~Job service North Dakota~~ The public employees retirement system board is authorized to administer the retirement plan established in 1961 and frozen to new entrants in 1980; for employees of job service North Dakota. The public employees retirement system board shall fund the administrative expenses of administering that retirement plan from the funds in that plan.

SECTION 2. AMENDMENT. Subsection 7 of section 54-52-04 of the North Dakota Century Code is amended and reenacted as follows:

7. The board shall administer chapters 39-03.1, 54-52.1, and 54-52.2, and may administer other optional employee benefit programs, including a flexible benefits plan, an optional employee short-term disability plan, a long-term care plan, or other optional employee benefit programs as the board deems appropriate. The board shall also administer the retirement plan established in 1961 and frozen to new entrants in 1980 for employees of job service North Dakota under chapter 52-11.

SPORTS AND AMUSEMENTS

CHAPTER 448

HOUSE BILL NO. 1067

(Representative Meier)

(Senator Brown)

(At the request of the Secretary of State)

EXEMPT BOXING EXHIBITIONS

AN ACT to amend and reenact section 53-01-18 of the North Dakota Century Code, relating to exempt boxing exhibitions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-01-18 of the North Dakota Century Code is amended and reenacted as follows:

53-01-18. Certain exhibitions exempt. All boxing or sparring exhibitions conducted ~~or promoted by the high schools or schools of higher learning, or amateur boxing or sparring exhibitions, must be conducted under the rules and supervision of the United States of America amateur boxing federation by bona fide educational institutions or by national amateur boxing associations or its their local affiliates and~~ are exempt from this chapter.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 449**SENATE BILL NO. 2148**

(Judiciary Committee)

(At the request of the State Gaming Commission)

GAMES OF CHANCE REVISIONS

AN ACT to create and enact a new subsection to section 53-06.1-12.3 of the North Dakota Century Code, relating to installment payments on delinquent taxes or penalties; and to amend and reenact section 53-06.1-01, subsections 2, 3, and 4 of section 53-06.1-01.1, section 53-06.1-03, subsections 1, 4, and 5 of section 53-06.1-06, sections 53-06.1-07.2 and 53-06.1-10, subsections 1 and 2 of section 53-06.1-11.1, subsections 3 and 5 of section 53-06.1-12, subsections 1, 2, 3, 4, and 6 of section 53-06.1-14, subsections 4, 8, 9, 10, and 11 of section 53-06.1-15.1, and subsection 1 of section 53-06.1-16 of the North Dakota Century Code, relating to games of chance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁹⁸ **SECTION 1. AMENDMENT.** Section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-01. Definitions. As used in this chapter:

1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of merchandise prizes, sales tax on bingo cards, pull tab excise tax, and federal excise tax imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401].
2. "Charitable organization" means an organization whose primary purpose is for relief of poor, distressed, underprivileged, diseased, elderly, or abused persons, prevention of cruelty to children or animals, or similar condition of public concern.
3. "Civic and service organization" means an organization whose primary purpose is to promote the common good and social welfare of a community as a sertoma, lion, rotary, jaycee, kiwanis, or similar organization.
4. "Closely related organization" means an organization that controls, is controlled by, or is under common control with another organization. Control exists when an organization has the authority or ability to elect, appoint, or remove a majority of the officers or directors of another organization or, by policy, contract, or otherwise, has the authority or ability to directly or indirectly direct or cause the direction of the management or policies of another organization.

¹⁹⁸ Section 53-06.1-01 was also amended by section 1 of House Bill No. 1239, chapter 450.

5. "Distributor" means a person that sells, markets, or distributes equipment ~~usable~~ designed for use in the conduct of games.
6. "Educational organization" means a nonprofit public or private elementary or secondary school, two-year or four-year college, or university.
7. "Eligible organization" means a veterans, charitable, educational, religious, fraternal, civic and service, public safety, or public-spirited organization domiciled in North Dakota, incorporated as a nonprofit organization, and which has been regularly and actively fulfilling its primary purpose within this state during the two immediately preceding years. However, an educational organization does not need to be incorporated or be in existence for two years. An organization's primary purpose may not involve the conduct of games. The organization may be issued a license by the attorney general.
8. "Fraternal organization" means an organization, except a school fraternity, which is a branch, lodge, or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members. The organization must have qualified for exemption from federal income tax under section 501(c)(8) or 501(c)(10) of the Internal Revenue Code.
9. "Games" means games of chance.
10. "Gross proceeds" means all cash and checks received from conducting games; and sales tax on bingo cards; ~~and admissions~~.
11. "Licensed organization" means an eligible organization licensed by the attorney general.
12. ~~"Local permit" means a permit issued by a governing body of a city or county to a nonprofit organization or group of people domiciled in North Dakota.~~
43. "Manufacturer" means, for a pull tab or bingo card, a person who designs, prints, assembles, or produces the product. For a pull tab or bingo card dispensing device or bingo card marking device, a manufacturer means the person who directly controls and manages development of and owns the rights to the proprietary software encoded on a processing chip that enables the device to operate.
44. 13. "Net proceeds" means adjusted gross proceeds less allowable expenses and gaming tax.
14. "Permit" means a local permit or charity local permit issued by a governing body of a city or county to a nonprofit organization or group of people domiciled in North Dakota.
15. "Person" means any person, partnership, corporation, limited liability company, association, or organization.
16. "Public safety organization" means an organization whose primary purpose is to provide firefighting, ambulance service, crime prevention, or similar emergency assistance.

17. "Public-spirited organization" means an organization whose primary purpose is for scientific research, amateur sports competition, safety, literary, arts, preservation of cultural heritage, educational activities, educational public service, youth, economic development, tourism, community medical care, community recreation, or similar organization, which does not meet the definition of any other type of eligible organization. However, a nonprofit organization or a group of people recognized as a public-spirited organization by a governing body of a city or county for obtaining a ~~local~~ permit does not need to meet this definition.
18. "Religious organization" means a church, body of communicants, or group gathered in common membership whose primary purpose is for advancement of religion, mutual support and edification in piety, worship, and religious observances.
19. "Veterans organization" means any congressionally chartered post organization, or any branch or lodge or chapter of a nonprofit national or state organization whose membership consists of individuals who are or were members of the armed services or forces of the United States. The organization must have qualified for exemption from federal income tax under section 501(c)(19) of the Internal Revenue Code.

SECTION 2. AMENDMENT. Subsections 2, 3, and 4 of section 53-06.1-01.1 of the North Dakota Century Code are amended and reenacted as follows:

2. A person is ineligible for appointment to the commission if that person has not been a resident of this state for at least two years before the date of appointment. A person is also ineligible if that person is not of such character and reputation as to promote public confidence in the administration of gaming in this state. A person is also ineligible if that person has been convicted of a felony criminal offense or has pled guilty or been found guilty of any violation of chapter 12.1-06, 12.1-08, 12.1-09, 12.1-10, 12.1-11, 12.1-12, 12.1-22, 12.1-23, 12.1-24, 12.1-28, 53-06.1, or 53-06.2, or has pled guilty or been found guilty of any violation of section 6-08-16 or 6-08-16.2, or has pled guilty or been found guilty of any offense or violation that has a direct bearing on the person's fitness to be involved in gaming, or who has committed an equivalent offense or violation of the laws of another state or of the United States. A person who has a financial interest in gaming or is an employee or a member of the gaming committee of a licensed organization or distributor cannot be a member ~~or employee~~ of the commission. For the purpose of this subsection, a financial interest includes the receiving of any direct payment from an eligible organization for property, services, or facilities provided to that organization.
3. Commission members are entitled to ~~sixty-two~~ seventy-five dollars ~~and fifty cents~~ per day for compensation for each day spent on commission duties and mileage and expense reimbursement as allowed to other state employees.
4. The commission shall adopt rules in accordance with chapter 28-32, to administer and regulate the gaming industry, including methods of conduct, play, and promotion of games; minimum procedures and standards for recordkeeping and internal control; requiring tax returns

and reports from organizations or distributors; methods of competition and doing business by distributors and manufacturers; acquisition and use of gaming equipment; quality standards or specifications for the manufacture of pull tabs, paper bingo cards, ~~and pull tab and bingo card dispensing devices, and bingo card marking devices~~; to ensure that net proceeds are used for educational, charitable, patriotic, fraternal, religious, or public-spirited uses; to protect and promote the public interest; to ensure fair and honest games; to ensure that fees and taxes are paid; and to prevent and detect unlawful gambling activity.

SECTION 3. AMENDMENT. Section 53-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-03. ~~Local permits~~ Permits, site authorization, and licenses.

1. Except as authorized by the attorney general, an organization that has its license suspended or revoked, or has relinquished or not renewed its license and not disbursed its net proceeds, is ineligible for a license or ~~local~~ permit. Only one of two or more closely related organizations may have a license or ~~local~~ permit at one time. A college or university fraternity, sorority, or club is not closely related to an educational organization. An organization shall apply for a ~~local~~ permit as follows:

a. An organization recognized as a public-spirited organization by the governing body of a city or county may apply for a local permit to conduct only raffles, bingo, or sports pools, or a charity local permit to conduct only raffles, bingo, sports pools, paddlewheels, twenty-one, and poker. The organization or closely related organizations as a whole may only award a primary prize that does not exceed ~~one~~ two thousand five hundred dollars and total prizes of all games that do not exceed ~~six~~ twelve thousand dollars per year. The determination of what is a "public-spirited organization" is within the sole discretion of the governing body. An organization shall disclose on the application its intended use of the net income from the gaming activity. A governing body may issue a ~~local~~ permit for games to be held at designated times and places. ~~An organization that is issued a charity local permit is restricted to one event per year and:~~

~~(1) May not pay remuneration to employees for personal services;~~

~~(2) Shall use chips as wagers;~~

~~(3) Shall redeem a player's chips for merchandise prizes or cash;~~

~~(4) Shall disburse gaming proceeds to eligible uses referenced by subsection 2 of section 53-06.1-11.1; and~~

~~(5) Shall file a report as prescribed by the attorney general with the governing body and attorney general.~~

b. An organization shall apply to the governing body of the city or county in which the proposed site is located. Application must be made on a form prescribed by the attorney general. Approval may

be granted at the discretion of the governing body. A governing body may establish a fee not to exceed twenty-five dollars for each local permit. A local permit must be on a fiscal year basis from July first to June thirtieth or on a calendar-year basis.

- c. Except for the restriction of subsection 1 of section 53-06.1-11.1, an organization that has a local permit may use the net income from the gaming proceeds activity for any purpose that does not violate this chapter or gaming rules.
 - d. An organization that has a charity local permit is restricted to one event per year and:
 - (1) May not pay remuneration to employees for personal services;
 - (2) Shall use chips as wagers;
 - (3) Shall redeem a player's chips for merchandise prizes for cash;
 - (4) Shall disburse net income to eligible uses referenced by subsection 2 of section 53-06.1-11.1; and
 - (5) Shall file a report prescribed by the attorney general with the governing body and attorney general.
2. An eligible organization shall apply for a license to conduct only bingo, raffles, calcuttas, pull tabs, punchboards, twenty-one, paddlewheels, poker, or sports pools by:
- a. First securing approval for a site authorization from the governing body of the city or county in which the proposed site is located. Approval, which may be granted at the discretion of the governing body, must be recorded on a site authorization form that is to accompany the license application to the attorney general for final approval. A governing body may not require an eligible organization to donate net proceeds to the city, county, or related political subdivision or for community programs or services within the city or county as a condition for receiving a site authorization from the city or county. A governing body may limit the number of tables for the game of twenty-one per site and the number of sites upon which a licensed organization may conduct games within the city or county. A governing body may charge a one hundred dollar fee for a site authorization; and
 - b. Annually applying for a license from the attorney general before July first on a form prescribed by the attorney general and remitting a one hundred fifty dollar license fee for each city or county that approves a site authorization. However, the attorney general may allow an organization that only conducts a raffle or calcutta in two or more cities or counties to annually apply for a consolidated license and remit a one hundred fifty dollar license fee for each city or county in which a site is located. An organization shall document that it qualifies as an eligible organization. If an organization amends its primary purpose as stated in its articles of

incorporation or materially changes its basic character, the organization shall reapply for licensure.

3. A licensed organization or organization that has a ~~local~~ permit shall conduct games as follows:
 - a. Only one licensed organization or organization that has a ~~local~~ permit may conduct games at an authorized site on a day, except that a raffle may be conducted for a special occasion by another licensed organization or organization that has a ~~local~~ permit when one of these conditions is met:
 - (1) When the area for the raffle is physically separated from the area where games are conducted by the regular organization.
 - (2) Upon request of the regular organization and with the approval of the alcoholic beverage establishment, the regular organization's license or ~~local~~ permit is suspended for that specific time of day by the attorney general.
 - b. Except for a temporary site authorized for fourteen or fewer consecutive days for not more than two events per quarter, a licensed organization may not have more than twenty-five sites unless granted a waiver by the attorney general. If the attorney general finds that there is no other licensed organization interested in conducting gaming at a site for which a waiver is being sought, the attorney general may approve the waiver for no more than five sites.
 - c. Games of pull tabs, punchboards, twenty-one, paddlewheels, poker, and sports pools may be conducted only during the hours when alcoholic beverages may be dispensed according to applicable regulations of the state, county, or city.
 - d. An organization may not permit a person under twenty-one years of age to directly or indirectly play pull tabs, punchboards, twenty-one, calcuttas, sports pools, paddlewheels, or poker. An organization may not permit a person under eighteen years of age to directly or indirectly play bingo unless the person is accompanied by an adult, bingo is conducted by an organization that has a ~~local~~ permit, or the game's prize structure does not exceed that allowed for a ~~local~~ permit.
4. A ~~local~~ permit₁ or site authorization and license₁ must be displayed at a site.
5. The attorney general may issue a conditional license to an eligible organization whose regularly issued license has expired or been suspended, revoked, or relinquished. The attorney general shall designate the time period for which the conditional license is valid and may impose any conditions.
6. A governing body or local law enforcement official may inspect a site's gaming equipment and examine or cause to be examined ~~the~~ any gaming-related books and records of a licensed organization or

organization that has a ~~local~~ permit ~~to the extent that the books and records relate to any transaction involving the direct or indirect conduct of games.~~

¹⁹⁹ **SECTION 4. AMENDMENT.** Subsections 1, 4, and 5 of section 53-06.1-06 of the North Dakota Century Code are amended and reenacted as follows:

1. No person, except a member, volunteer, an employee of a licensed organization or an organization that has a ~~local~~ permit, or an employee of a temporary employment agency who provides services to a licensed organization, may manage, control, or conduct any game. "Member" includes a member of an auxiliary organization. In conducting pull tabs or bingo through a dispensing device or selling raffle tickets, the attorney general may allow an employee of an alcoholic beverage establishment to provide limited assistance to an organization.
4. The value of a merchandise prize awarded in a game is its retail price, excluding sales tax.
5. A person is restricted from being involved in gaming and the attorney general shall conduct a criminal history record check as follows:
 - a. (1) A person who has pled guilty to or been found guilty of a felony offense as defined by the laws of this state, other states, or the federal government, or has pled guilty to or been found guilty of a violation of this chapter, a gaming rule, chapter 12.1-28 or 53-06.2, or offenses of other states or the federal government equivalent to offenses defined in these chapters, regardless of whether the person has completed or received a deferred imposition of sentence, deferred prosecution, or suspended sentence, may not be a licensed distributor, be an investor in or board member or consultant to a licensed distributor, or be employed by a licensed distributor, and may not be employed by a licensed organization to conduct games, for five years from the date of conviction, release from incarceration, or expiration of parole or probation, whichever is the latest.
 - (2) Paragraph 1 does not apply if the offense to which the person pled guilty or has been found guilty is a misdemeanor and the person has received a deferred imposition of sentence or deferred prosecution and has fully complied with the terms of the deferral.
- b. A person who has pled guilty to or been found guilty of a misdemeanor offense in violation of section 6-08-16.1 or chapter 12.1-06, 12.1-23, or 12.1-24 or offenses of other states, the federal government, or a municipality equivalent to these offenses, regardless if the person has completed or received a suspended sentence, may not be a licensed distributor or be employed by a

¹⁹⁹ Section 53-06.1-06 was also amended by section 2 of House Bill No. 1239, chapter 450.

licensed distributor, and may not be employed by a licensed organization to conduct games, for two years from the date of conviction, release from incarceration, or expiration of parole or probation, whichever is the latest, unless the person has received a deferred imposition of sentence or deferred prosecution and has fully complied with the terms of the deferral.

- c. Unless an employee is exempt by the gaming rules or attorney general, the attorney general shall conduct a criminal history record check of each employee of a licensed organization or distributor and charge a fee of ~~twenty dollars~~ prescribed by section 12-60-16.9. The fee may be waived by the attorney general if a federal agency or local law enforcement agency has done a record check. The attorney general may require advance payment of any additional fee necessary to pay the cost of a record check of a person for whom adequate background information sources are not readily available. ~~Instead of paying the additional fee, a person may cancel the record check.~~ The advance payment must be placed in the attorney general's refund fund. The unused funds must be returned to the person within thirty days of the conclusion of the record check. Unless a federal or local law enforcement agency conducts the record check, the attorney general shall notify the organization or distributor and person of the result. The attorney general shall keep the information confidential except in the proper administration of this chapter or any gaming rule or to provide to an authorized law enforcement agency.

SECTION 5. AMENDMENT. Section 53-06.1-07.2 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-07.2. Poker. Poker may be conducted on not more than two occasions per year. An organization may supply the dealer. The maximum single bet is one dollar. Not more than three raises, of not more than one dollar each, may be made among all the players in each round of bets. For nontournament activity, an organization shall charge each player a fee not to exceed two dollars per one-half hour of playing time, collected in advance. For a tournament, an organization shall charge each player an entry fee and the amount of prizes may not exceed ninety percent of the gross proceeds.

SECTION 6. AMENDMENT. Section 53-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-10. Twenty-one. The organization shall provide playing chips of various denominations to players although the organization may use a metal coin rather than a fifty-cent chip. The maximum limit per wager may be set by the organization at not more than twenty-five dollars and original wagers in increments of one dollar must be accepted up to the maximum limit. However, if there is more than one table that is active at a site, the organization may set a minimum wager on no more than one-half of the active tables. A player may not play more than two hands at the same time. Only the player actually playing a hand may place a wager on ~~any~~ that hand. Each player plays the player's hand against the dealer's hand. Any requirement to pool tips is within the sole discretion of each organization. Except for a site that has twenty-one gross proceeds averaging less than ten thousand dollars per quarter, an organization may not conduct twenty-one at the site with wagers exceeding two dollars unless the organization has first installed video surveillance

equipment as required by rules and the equipment is approved by the attorney general.

SECTION 7. AMENDMENT. Subsections 1 and 2 of section 53-06.1-11.1 of the North Dakota Century Code are amended and reenacted as follows:

1. A licensed organization or an organization that has a ~~local~~ permit may not use money from any source for placing an initiated or referred measure on a ballot or for a political campaign to promote or oppose a person for public office. Except for a use related to an organization's primary purpose, a licensed organization or organization that has a ~~local~~ permit may not use net proceeds to influence legislation or promote or oppose referendums or initiatives. Any funds expended by a licensed organization or an organization that has a ~~local~~ permit to promote or oppose an initiated or referred measure that is on the ballot or for any activities of a lobbyist under section 54-05.1-02, that are not compensation or expenses paid to a lobbyist, and that are not required to be reported under section 54-05.1-03 must be reported to the attorney general as prescribed by the attorney general. A violation of this subsection subjects an organization to a suspension of its license or ~~local~~ permit for up to one year.
2. A licensed organization or an organization that has a charity local permit shall disburse net proceeds within the period prescribed by rule and for only these educational, charitable, patriotic, fraternal, religious, or public-spirited uses:
 - a. Uses for stimulating and promoting state and community-based economic development programs within the state which improve the quality of life of community residents.
 - b. Uses for developing, promoting, and supporting tourism within a city, county, or the state.
 - c. Uses benefiting an indefinite number of persons by bringing them under the influence of education, cultural programs, or religion which include disbursements to provide:
 - (1) Scholarships for students, if the disbursement is deposited in a scholarship fund for defraying the cost of education to students and the scholarships are awarded through an open and fair selection process.
 - (2) Supplementary assistance to a public or private nonprofit educational institution registered with or accredited by any state.
 - (3) Assistance to libraries and museums.
 - (4) Assistance for the performing arts and humanities.
 - (5) Preservation of cultural heritage.
 - (6) Youth community, social welfare, and athletic activities.

- (7) Adult amateur athletic activities within the state, including team uniforms and equipment.
 - (8) Maintenance of places of public worship or support of a body of communicants, gathered in common membership for mutual support and edification in piety, worship, or religious observances.
 - (9) Scientific research.
- d. Uses benefiting an indefinite number of persons by relieving them of disease, suffering, or constraint which include disbursements to provide:
- (1) Assistance to an individual or family suffering from poverty or homelessness.
 - (2) Encouragement and enhancement of the active participation of the elderly in our society.
 - (3) Services to the abused.
 - (4) Services to persons with an addicted behavior toward alcohol, gambling, or drugs.
 - (5) Funds to combat juvenile delinquency and rehabilitate ex-offenders.
 - (6) Relief for the sick, diseased, and terminally ill and their physical well-being.
 - (7) Funds for emergency relief and volunteer services.
 - (8) Funds to nonprofit nursing homes, nonprofit day care centers, and nonprofit medical facilities.
 - (9) Social services and education programs aimed at aiding emotionally and physically distressed, handicapped, elderly, and underprivileged persons.
 - (10) Funds for crime prevention, fire protection and prevention, and public safety.
 - (11) Funds to relieve, improve, and advance the physical and mental conditions, care and medical treatment, and health and welfare of injured or disabled veterans.
- e. Uses that perpetuate the memory and history of the dead.
- f. Uses increasing comprehension of and devotion to the principles upon which the nation was founded, not of direct benefit to the eligible organization or any member thereof which include disbursements to aid in teaching the principles of liberty, truth, justice, and equality. However, beauty pageants do not qualify.

- g. The erection or maintenance of public buildings, facilities, utilities, or waterworks.
- h. Uses lessening the burden of government which include disbursements to an entity that is normally funded by a city, county, state, or United States government and disbursements directly to a government entity or its agency.
- i. Uses benefiting a definite number of persons who are the victims of loss of home or household possessions through explosion, fire, flood, or storm and the loss is not covered by insurance.
- j. Uses benefiting a definite number of persons suffering from a seriously disabling disease or injury causing severe loss of income or incurring extraordinary medical expense which is not covered by insurance.
- k. Uses, for community service projects, by chambers of commerce exempt from federal income tax under section 501(c)(6) of the Internal Revenue Code. A project qualifies if it develops or promotes public services, including education, housing, transportation, recreation, crime prevention, fire protection and prevention, safety, tourism, and health. Uses that directly benefit a chamber of commerce do not qualify.
- l. Uses for or of benefit to efforts in support of the health, comfort, or well-being of the community which include disbursements to provide:
 - (1) Funds for adult bands, including drum and bugle corps.
 - (2) Funds for trade shows and conventions conducted in this state.
 - (3) Funds for nonprofit organizations that operate a humane society, zoo, or fish or wildlife reproduction and habitat enhancement program.
 - (4) Funds for public transportation, community celebration, and recreation.
 - (5) Funds for preservation and cleanup of the environment.
- m. To the extent net proceeds are used toward the primary purpose of a charitable, educational, religious, public safety, or public-spirited organization, or are used for a veterans or public cemetery by a veterans organization, that has obtained a final determination from the internal revenue service as qualifying for exemption from federal income tax under section 501(c)(3) or 501(c)(19) of the Internal Revenue Code, the organization may establish a special trust fund or foundation as a contingency for funding or maintaining the organization's future program services should the organization discontinue conducting games or dissolve.

- n. Uses for a fundraising activity unrelated to an organization's ~~program services~~ primary purpose provided that the gross revenue from the activity is disbursed to uses prescribed by this subsection.

SECTION 8. AMENDMENT. Subsections 3 and 5 of section 53-06.1-12 of the North Dakota Century Code are amended and reenacted as follows:

3. For organizations whose gross proceeds of pull tabs do not exceed four thousand dollars per calendar quarter, no excise tax may be imposed on the gross proceeds from the sale at retail of pull tabs to final users.
5. The state treasurer shall deposit three percent of the total taxes, less refunds, collected under this section into a gaming and excise tax allocation fund. Pursuant to legislative appropriation, moneys in the fund must be distributed quarterly to cities and counties in proportion to the taxes collected under this section from licensed organizations conducting games of chance within each city, for sites within city limits, or within each county, for sites outside city limits. If a city or county allocation under this subsection is less than two hundred dollars, that city or county is not entitled to receive a payment for the quarter and the undistributed amount must be included in the total amount to be distributed to other cities and counties for the quarter.

SECTION 9. A new subsection to section 53-06.1-12.3 of the North Dakota Century Code is created and enacted as follows:

The attorney general may authorize an organization to pay any delinquent tax, interest, or penalty on an installment plan and may set any qualifying conditions.

²⁰⁰ **SECTION 10. AMENDMENT.** Subsections 1, 2, 3, 4, and 6 of section 53-06.1-14 of the North Dakota Century Code are amended and reenacted as follows:

1. A manufacturer of pull tabs, bingo cards, bingo card marking devices, or pull tab dispensing devices shall apply annually for a license and pay a license fee of four thousand dollars. A distributor shall apply annually for a license and pay a license fee of one thousand five hundred dollars. Application must be made before the first day of April in each year on a form prescribed by the attorney general ~~before the first day of April in each year.~~
2. A licensed distributor may not sell, market, or distribute gaming equipment except to a licensed distributor, licensed organization, organization that has a ~~local~~ permit, or other person authorized by gaming rule or the attorney general. A manufacturer of a pull tab dispensing device, pull tab, bingo card marking device, or bingo card may only sell, market, or distribute the manufacturer's pull tab dispensing device and processing chip encoded with proprietary software, pull tab, bingo card marking device, or bingo card to a

²⁰⁰ Section 53-06.1-14 was also amended by section 1 of House Bill No. 1404, chapter 451, and section 9 of Senate Bill No. 2003, chapter 24.

licensed distributor. A licensed distributor may purchase or acquire a pull tab dispensing device and processing chip encoded with proprietary software, pull tab, bingo card marking device, or bingo card only from a licensed manufacturer or licensed distributor. However, a distributor may purchase or acquire a used pull tab dispensing device from a licensed organization. A distributor may not duplicate a manufacturer's processing chip encoded with proprietary software. No gaming equipment or ~~prizes~~ prize may be sold or leased at an excessive price.

3. A licensed distributor shall affix a North Dakota gaming stamp to each deal of pull tabs and bingo cards, punchboard, sports pool board, calcutta board, and series of paddlewheel ticket cards sold or otherwise provided to a licensed organization and shall purchase the stamps from the attorney general for thirty-five cents each. Ten cents of each stamp sold by the attorney general, up to thirty-six thousand dollars per biennium, must be credited to the attorney general's operating fund to defray the costs of issuing the gaming stamps.
4. A licensed organization, organization that has a ~~local~~ permit, licensed manufacturer, or North Dakota wholesaler of liquor or alcoholic beverages may not be a distributor or stockholder of a distributor. A distributor may not be a stockholder of a manufacturer.
6. A licensed manufacturer may not refuse to sell deals of pull tabs or paper bingo cards to a licensed distributor unless:
 - a. A specific deal of pull tabs is sold on an exclusive basis;
 - b. The manufacturer does not sell deals of pull tabs or paper bingo cards to any distributor in the state;
 - c. A gaming law or rule prohibits the sale;
 - d. The distributor has not provided the manufacturer with proof of satisfactory credit or is delinquent on any payment owed to the manufacturer; or
 - e. The distributor has not met the manufacturer's standard minimum order quantity and freight terms.

SECTION 11. AMENDMENT. Subsections 4, 8, 9, 10, and 11 of section 53-06.1-15.1 of the North Dakota Century Code are amended and reenacted as follows:

4. Demand access to and inspect, examine, photocopy, and audit all books and records of applicants, organizations, lessors, manufacturers, distributors, and affiliated companies on their premises concerning any income, ~~or expense resulting from any gaming activity,~~ or use of net proceeds, and determine compliance with this chapter or gaming rules; ~~and require verification of income, expense, or use of net proceeds, and all other matters affecting this chapter.~~
8. Require or authorize an organization to pay or prohibit an organization from paying a bingo or raffle prize to a player on a dispute or based on a factual determination or a hearing by the attorney general.

9. Based on reasonable ground or written complaint, suspend, deny, or revoke an organization's ~~local~~ permit or an organization's, distributor's, or manufacturer's application or license for violation, by the organization, distributor, or manufacturer or any officer, director, agent, member, or employee of the organization, distributor, or manufacturer, of this chapter or any gaming rule.
10. Impose a monetary fine on a licensed organization, organization that has a ~~local~~ permit, distributor, or manufacturer for failure to comply with this chapter or any gaming rule. The monetary fine for each violation by an organization is a minimum of twenty-five dollars and may not exceed two percent of the organization's average quarterly gross proceeds, or five thousand dollars, whichever is greater. The monetary fine for each violation by a distributor is a minimum of one hundred dollars and may not exceed five thousand dollars. The monetary fine for each violation by a manufacturer is a minimum of five hundred dollars and may not exceed two hundred fifty thousand dollars. This fine may be in addition to or in place of a license suspension or revocation.
11. At any time within three years after any amount of fees, monetary fine, interest, penalty, or tax required to be paid pursuant to this chapter becomes due, bring a civil action to collect the amount due. However, if for any reason there is a change in adjusted gross ~~income~~ proceeds or tax liability by an amount which is in excess of twenty-five percent of the amount of adjusted gross ~~income~~ proceeds or tax liability originally reported on the tax return, any additional tax determined to be due may be assessed within six years after the due date of the tax return, or six years after the tax return was filed, whichever period expires later. An action may be brought although the person owing the fees or tax is not presently licensed.

SECTION 12. AMENDMENT. Subsection 1 of section 53-06.1-16 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided by this chapter, a person who knowingly makes a false statement on a request for record check form or in any application for a ~~local~~ permit, or license, or in any accompanying statement, knowingly signs a false record or report, or who fails to maintain sufficient books and records or adequate internal control to substantiate gross proceeds, prizes, cash profits, expenses, or disbursement of net proceeds, or who falsifies any books or records ~~relating to,~~ including any transaction involving the direct or indirect conduct of games, or who violates this chapter, any gaming rule, or of any term of a ~~local~~ permit or license is guilty of a class A misdemeanor. If convicted, the person forfeits any gaming license or ~~local~~ permit issued to it and is ineligible to reapply for a gaming license or ~~local~~ permit for a period of time determined by the attorney general.

Approved April 23, 2003
Filed April 23, 2003

CHAPTER 450

HOUSE BILL NO. 1239

(Representatives Porter, Delmore, Wrangham)
(Senators Krebsbach, Trenbeath)

PRIZE BOARDS

AN ACT to amend and reenact section 53-06.1-01 and subsection 1 of section 53-06.1-06 of the North Dakota Century Code, relating to the selling of prize boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰¹ **SECTION 1. AMENDMENT.** Section 53-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

53-06.1-01. Definitions. As used in this chapter:

1. "Adjusted gross proceeds" means gross proceeds less cash prizes, cost of merchandise prizes, sales tax on bingo cards, pull tab excise tax, and federal excise tax imposed under section 4401 of the Internal Revenue Code [26 U.S.C. 4401].
2. "Charitable organization" means an organization whose primary purpose is for relief of poor, distressed, underprivileged, diseased, elderly, or abused persons, prevention of cruelty to children or animals, or similar condition of public concern.
3. "Civic and service organization" means an organization whose primary purpose is to promote the common good and social welfare of a community as a sertoma, lion, rotary, jaycee, kiwanis, or similar organization.
4. "Closely related organization" means an organization that controls, is controlled by, or is under common control with another organization. Control exists when an organization has the authority or ability to elect, appoint, or remove a majority of the officers or directors of another organization or, by policy, contract, or otherwise, has the authority or ability to directly or indirectly direct or cause the direction of the management or policies of another organization.
5. "Distributor" means a person that sells, markets, or distributes equipment usable in the conduct of games.
6. "Educational organization" means a nonprofit public or private elementary or secondary school, two-year or four-year college, or university.

²⁰¹ Section 53-06.1-01 was also amended by section 1 of Senate Bill No. 2148, chapter 449.

7. "Eligible organization" means a veterans, charitable, educational, religious, fraternal, civic and service, public safety, or public-spirited organization domiciled in North Dakota, incorporated as a nonprofit organization, and which has been actively fulfilling its primary purpose within this state during the two immediately preceding years. However, an educational organization does not need to be incorporated. An organization's primary purpose may not involve the conduct of games. The organization may be issued a license by the attorney general.
8. "Fraternal organization" means an organization, except a school fraternity, which is a branch, lodge, or chapter of a national or state organization and exists for the common business, brotherhood, or other interests of its members. The organization must have qualified for exemption from federal income tax under section 501(c)(8) or 501(c)(10) of the Internal Revenue Code.
9. "Games" means games of chance.
10. "Gross proceeds" means all cash and checks received from conducting games, sales tax on bingo cards, and admissions.
11. "Licensed organization" means an eligible organization licensed by the attorney general.
12. "Local permit" means a permit issued by a governing body of a city or county to a nonprofit organization or group of people domiciled in North Dakota.
13. "Manufacturer" means, for a pull tab or bingo card, a person who designs, prints, assembles, or produces the product. For a pull tab or bingo card dispensing device or bingo card marking device, a manufacturer means the person who directly controls and manages development of and owns the rights to the proprietary software encoded on a processing chip that enables the device to operate.
14. "Net proceeds" means adjusted gross proceeds less allowable expenses and gaming tax.
15. "Person" means any person, partnership, corporation, limited liability company, association, or organization.
16. "Prize board" means a board used with pull tabs to award cash or merchandise prizes.
17. "Public safety organization" means an organization whose primary purpose is to provide firefighting, ambulance service, crime prevention, or similar emergency assistance.
- ~~47.~~ 18. "Public-spirited organization" means an organization whose primary purpose is for scientific research, amateur sports competition, safety, literary, arts, preservation of cultural heritage, educational activities, educational public service, youth, economic development, tourism, community medical care, community recreation, or similar organization, which does not meet the definition of any other type of eligible organization. However, a nonprofit organization or a group of people recognized as a public-spirited organization by a governing body of a

city or county for obtaining a local permit does not need to meet this definition.

- ~~48.~~ 19. "Religious organization" means a church, body of communicants, or group gathered in common membership whose primary purpose is for advancement of religion, mutual support and edification in piety, worship, and religious observances.
- ~~49.~~ 20. "Veterans organization" means any congressionally chartered post organization, or any branch or lodge or chapter of a nonprofit national or state organization whose membership consists of individuals who are or were members of the armed services or forces of the United States. The organization must have qualified for exemption from federal income tax under section 501(c)(19) of the Internal Revenue Code.

²⁰² **SECTION 2. AMENDMENT.** Subsection 1 of section 53-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

1. No person, except a member, volunteer, an employee of a licensed organization or an organization that has a local permit, or an employee of a temporary employment agency who provides services to a licensed organization, may manage, control, or conduct any game. "Member" includes a member of an auxiliary organization. In conducting pull tabs, prize boards, or bingo through a dispensing device ~~or~~, selling raffle tickets, or conducting sports pools, the attorney general may allow an employee of an alcoholic beverage establishment to provide limited assistance to an organization.

Approved March 27, 2003
Filed March 28, 2003

²⁰² Section 53-06.1-06 was also amended by section 4 of Senate Bill No. 2148, chapter 449.

CHAPTER 451**HOUSE BILL NO. 1404**
(Representatives Wrangham, Grosz)
(Senator Dever)**PULL TAB DISPENSING DEVICE MANUFACTURER
LICENSES**

AN ACT to amend and reenact subsection 1 of section 53-06.1-14 of the North Dakota Century Code, relating to the license fee for pull tab dispensing device manufacturers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰³ **SECTION 1. AMENDMENT.** Subsection 1 of section 53-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

1. A manufacturer of pull tabs, bingo cards, or bingo card marking devices, ~~or pull tab dispensing devices~~ shall apply annually for a license and pay a license fee of four thousand dollars. A manufacturer of pull tab dispensing devices shall apply annually for a license and pay a license fee of one thousand dollars. A distributor shall apply annually for a license and pay a license fee of one thousand five hundred dollars. Application must be made before the first day of April in each year on a form prescribed by the attorney general ~~before the first day of April in each year.~~

Approved April 7, 2003
Filed April 7, 2003

²⁰³ Section 53-06.1-14 was also amended by section 9 of Senate Bill No. 2003, chapter 24, and section 10 of Senate Bill No. 2148, chapter 449.

CHAPTER 452

SENATE BILL NO. 2285

(Senators Heitkamp, Grindberg)
(Representatives R. Kelsch, Nelson)

WAGERS PARIMUTUEL TAX

AN ACT to amend and reenact section 53-06.2-11 of the North Dakota Century Code, relating to the parimutuel tax levied upon wagers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-06.2-11 of the North Dakota Century Code is amended and reenacted as follows:

53-06.2-11. Bet payoff formulas - Uses by licensee of funds in excess of expenses - Payment to general fund.

1. For each day of a live race meet 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. ~~The licensee may retain seventeen percent for expenses.~~ One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota purse fund. One-half of one percent must be paid to the North Dakota racing commission to be used for the North Dakota breeders' fund for the respective breed of horses racing at that meet. ~~The remaining~~ 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 this amount, the licensee may retain twenty-one percent for expenses. One-half~~ 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; one-half of one percent must be paid to the commission to be deposited in the promotion fund. One-half; one-half of one percent must be paid to the commission to be deposited in the breeders' fund. The remaining; 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, upon approval of the attorney general, 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 those funds under this chapter and must be administered and disbursed in accordance with rules adopted by the commission.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 453

SENATE BILL NO. 2321

(Senators Trenbeath, Bowman, Robinson)
(Representatives Monson, Tieman)

RECREATIONAL USE LIMITED LIABILITY

AN ACT to amend and reenact section 53-08-05 of the North Dakota Century Code, relating to the limited liability of the owner of land used for recreational purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 53-08-05 of the North Dakota Century Code is amended and reenacted as follows:

53-08-05. Failure to warn against dangerous conditions - Charge to enter. ~~Nothing in this~~ This chapter limits ~~does not limit~~ in any way any liability ~~which~~ that otherwise exists for:

1. Willful and malicious failure to guard or warn against a dangerous condition, use, structure, or activity; or
2. Injury suffered in any case ~~when~~ in which the owner of land ~~charges~~:
 - a. Charges the person or persons who enter or go on for entry onto the land other than the amount, if any, paid to the owner of the land by the state; and
 - b. The total charges collected by the owner in the previous calendar year for all recreational use of land under the control of the owner are more than:
 - (1) Twice the total amount of property taxes imposed on the land for the previous calendar year; or
 - (2) In the case of agricultural land, four times the total amount of property taxes imposed on the land for the previous calendar year.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 454

HOUSE BILL NO. 1243

(Representatives Maragos, Berg, Boucher)
(Senators O'Connell, Stenehjem)

LOTTERY ESTABLISHMENT AND OPERATION

AN ACT to create and enact a new section to chapter 50-06, chapter 53-12, a new subsection to section 57-38-57, a new subsection to section 57-39.2-04, and a new subsection to section 57-39.2-23 of the North Dakota Century Code, relating to compulsive gambling prevention and treatment, the establishment of the North Dakota lottery, disclosure of confidential income and sales and use tax information, and to an exemption from sales tax; to amend and reenact subsection 2 of section 50-09-14 and subsection 2 of section 54-10-01 of the North Dakota Century Code, relating to setoffs of lottery prize payments for payment of child support and to the powers and duties of the state auditor; to provide a penalty; to provide a continuing appropriation; to provide for reimbursement of lottery expenses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

Compulsive gambling prevention and treatment fund - Continuing appropriation. Funds deposited in the compulsive gambling prevention and treatment fund under section 53-12-21 are appropriated to the department on a continuing basis for the purpose of providing the services under section 50-06-21.

SECTION 2. AMENDMENT. Subsection 2 of section 50-09-14 of the North Dakota Century Code is amended and reenacted as follows:

2. Any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, ~~or chapter 35-34~~ or by the North Dakota lottery director under chapter 53-12 to establish or enforce a child support order may seek review of the action of ~~the state agency or child support agency~~ in the court of this state ~~that~~ which issued or considered the child support order. If an order for child support was issued by a court or administrative tribunal in another state, any person aggrieved by an action taken by the state agency or a child support agency under section 14-09-25, chapter 35-34, this chapter, ~~or chapter 35-34~~ or by the North Dakota lottery director under chapter 53-12 to enforce that order may seek review of the action of ~~the state agency or child support agency~~ in any court of this state which has jurisdiction to enforce that order, or if no court of this state has jurisdiction to enforce that order, in any court of this state with jurisdiction over the necessary parties. Any review sought under this subsection must be commenced within thirty days after the date of action for which review is sought. A person who has a right of review under this subsection may not seek review of the actions of ~~the state agency or child support agency~~ in a proceeding under chapter 28-32.

SECTION 3. Chapter 53-12 of the North Dakota Century Code is created and enacted as follows:

53-12-01. Definitions. As used in this chapter:

1. "Advisory commission" means the North Dakota lottery advisory commission.
2. "Director" means the director of the North Dakota lottery.
3. "Gross profits" means on-line sales of lottery tickets less prize share payments, prizes claimed on redeemed winning tickets, and lottery retailer commissions.
4. "Immediate family member" means a parent, stepparent, child, stepchild, spouse, or sibling who is a member of the same household in the principal place of abode.
5. "Major procurement" means any contract with any vendor directly involved in providing facilities, equipment, tickets, and services unique to the lottery, but not including materials, supplies, equipment, and services common to the ordinary operations of state agencies.
6. "North Dakota lottery" means the division of the attorney general's office created to operate a lottery pursuant to this chapter.
7. "On-line lottery" means a game linked to a central computer via a telecommunications network in which the player selects a specified group of numbers or symbols out of a predetermined range of numbers or symbols.
8. "Retailer" means any person the North Dakota lottery has licensed to sell lottery tickets to the public.
9. "Ticket" means any tangible evidence issued or authorized by the North Dakota lottery to prove participation in an on-line lottery game.
10. "Vendor" means any person who has entered a major procurement contract with the North Dakota lottery.

53-12-02. North Dakota lottery - Administration - Overall control and operation of games. There is established a division of the attorney general's office to be called the North Dakota lottery. Under the supervision of the attorney general, a director shall administer the lottery as provided in this chapter. In all decisions, the director shall take into account the particularly sensitive nature of the lottery and shall act to promote and ensure the integrity, security, honesty, and fairness of its operation and administration. The overall management of the lottery and control over the operation of its games rest solely with the North Dakota lottery.

53-12-03. Director - Appointment - Employment of personnel. The attorney general shall appoint a director who shall serve at the pleasure of the attorney general. The director may employ those persons as may be necessary to operate the lottery.

53-12-04. Functions of director. Subject to the rules and policies established by the attorney general, the director may:

1. Supervise and administer the operation of the lottery in accordance with this chapter and in accordance with the written agreement with a government-authorized lottery;
2. Employ other employees of the North Dakota lottery;
3. Enter contracts for promotional services; annuities or other methods deemed appropriate for the payment of prizes; data processing and other technical products, equipment, and services, including services from financial institutions and other state agencies; and facilities as needed to operate the lottery, including tickets and other services involved in major procurements;
4. License persons for the sale of lottery tickets as provided by this chapter and rules adopted to implement this chapter;
5. Make demographic studies of lottery players and studies of reactions of citizens to existing and potential features of the lottery;
6. Require lottery retailers and persons licensed under this chapter to furnish proof of financial stability or to post a bond in an amount the director deems necessary to protect the financial interests of the state;
7. Provide for secure facilities to house the North Dakota lottery;
8. Provide for secure data processing facilities to be used for the reliable operation of the lottery;
9. Examine, or cause to be examined by any agent or representative designated by the director, any books, papers, records, or memoranda of any retailer or person licensed under this chapter for the purpose of ascertaining compliance with this chapter or any rule adopted under this chapter;
10. Based on reasonable ground or written complaint, suspended, deny, or revoke a lottery retailer's license or impose a monetary fine, or both, for a violation, by the retailer or any agent, member, or employee of the retailer, of this chapter or any rule adopted under this chapter; and
11. Share human and financial resources of other divisions within the office of attorney general.

53-12-05. Competitive bidding required before entering into contracts.

When entering contracts, the director shall utilize an open and competitive bid process which reflects the best interest of the state. The director shall consider all relevant factors, including security, competence, experience, timely performance, and maximization of net revenues to the state.

53-12-06. Investigation of vendors. Before a contract for a major procurement is awarded, the director shall conduct a thorough background investigation of the vendor, any parent or subsidiary corporation of the vendor, all shareholders of five percent or more interest in the vendor or parent or subsidiary corporation of the vendor, and all officers and directors of the vendor or parent or subsidiary corporation of the vendor to whom the contract is to be awarded. In conducting the investigations, the director may use the information of other states to determine the qualifications of the vendor. The vendor shall submit appropriate

investigation authorizations to facilitate this investigation. The director may require any additional information from the vendor that is considered appropriate to preserve the integrity and security of the lottery.

53-12-07. Additional functions of director. The director shall:

1. Enter a written agreement with a government-authorized lottery, or with an organization created and controlled by those lotteries, for the operation, marketing, and promotion of a joint lottery game;
2. Make and keep books and records which accurately and fairly reflect each day's transactions, including the distribution and sale of tickets, receipt of funds, prize claims, prize disbursements, or prizes liable to be paid, expenses and other financial transactions of the lottery necessary so as to ensure accountability;
3. Make quarterly and annual financial reports to the governor and the attorney general and biennial reports to the legislative assembly. The reports must be based upon generally accepted accounting principles and include a full and complete statement of the lottery's financial position and operations;
4. Upon request, report to the legislative council regarding the implementation and operation of the lottery;
5. Have an annual audit, conducted by the state auditor, of all accounts and transactions of the North Dakota lottery. The audit report must be presented to the governor, the state treasurer, and the legislative assembly;
6. Contract with an agency of state government or an independent firm experienced in security procedures to periodically conduct a comprehensive study and evaluation of all aspects of security in the operation of the lottery;
7. Prepare and submit budgets and proposals for the operation of the lottery;
8. Operate the lottery so that after the initial funding, it is self-sustaining and self-funded; and
9. Make provision for the timely and efficient transfer of funds due from lottery retailers.

53-12-08. Lottery expenses and prizes to be paid from lottery funds - General funds not to be used or obligated - Exception. No claim for the payment of an expense of the lottery or the payment of a lottery prize may be made unless it is against the lottery operating fund or money collected from the sale of lottery tickets. Except for the initial startup funding to the lottery, the general funds of the state may not be used or obligated to pay the expenses of the lottery or prizes of the lottery.

53-12-09. Selection of lottery retailers.

1. The director shall select as retailers those persons the director deems best able to serve the public convenience and promote the sale of tickets. In the selection of retailers, the director shall consider factors,

including financial responsibility, security of the applicant's place of business or activity, accessibility of the applicant's place of business or activity, integrity, reputation, sufficiency of existing lottery retailers to serve the public convenience, especially in geographically remote areas of the state, volume of expected sales, and any other factors as the director may deem appropriate. Any person lawfully engaged in nongovernmental business on state property may be selected as retailers.

2. No applicant for a license or other affirmative action has any right to a license or to the granting of the approval sought. Any license issued or other approval granted under this chapter is a revocable privilege, and the holder does not acquire any vested interest or property right in the license or other approval granted under this chapter.

53-12-10. Reapplication for license after denial or revocation - Denial or revocation decisions final. Any applicant for a license who has had an application denied or a license revoked by the director may not reapply until at least one year has elapsed from the date of the denial or revocation. Any person who has been denied a license or had a license revoked for a second time may not reapply until at least three years have passed since the date of the second denial or revocation. The decision of the director to deny an application or to revoke a license is final and is not reviewable.

53-12-11. Retailer's application fee - Annual renewal of license - License not transferable or assignable. The director may charge an application fee to a person applying to become a retailer. A retailer license awarded by the lottery under this chapter is renewable annually after issuance unless sooner canceled, revoked, or terminated. A retailer license awarded under this chapter is not transferable or assignable.

53-12-12. Issuance of retailer license - Display - Sales only at location on license. Each retailer must be issued a retailer license that must be conspicuously displayed at the place where the retailer is authorized to sell tickets. Tickets may only be sold by the retailer at the location stated on the retailer license.

53-12-13. Qualifications of retailer.

1. To be selected as a retailer, an individual acting as a sole proprietor must:
 - a. Be at least eighteen years of age;
 - b. Be of good character and reputation;
 - c. Have sufficient financial resources to support the activities required to sell lottery tickets; and
 - d. Be current in payment of all taxes, interest, and penalties owed to the state, excluding items under formal dispute or appeal pursuant to applicable statutes.
2. A retailer may not be a lottery vendor or an employee or agent of any lottery vendor doing business with the North Dakota lottery.

53-12-14. Individuals ineligible to be licensed as retailer by the lottery.

An individual may not be licensed by the lottery or involved in lottery activities under this chapter if the individual:

1. Has been convicted of a felony in this or any other jurisdiction, unless at least ten years have passed since satisfactory completion of the sentence or probation imposed by the court in each felony;
2. Has been found to have violated any provision of this chapter or any rule adopted to implement this chapter;
3. Has been found to have a background, including a criminal record, or prior activities that pose a threat to the public interests of the state or to the security and integrity of the lottery; create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming; or present questionable business practices and financial arrangements incidental to the conduct of lottery activities;
4. Is an immediate family member of an employee of the North Dakota lottery or of a member of the advisory commission; or
5. Has knowingly made a false statement of material fact to the North Dakota lottery.

53-12-15. Partnership as retailer. For a partnership to be selected as a retailer, the partnership must meet the requirements of subdivisions c and d of subsection 1 of section 53-12-13, and each partner of the partnership must meet the requirements of subdivisions a and b of subsection 1 of section 53-12-13 and of section 53-12-14.

53-12-16. Organization as retailer. For an organization other than a partnership to be selected as a retailer, the organization must meet the requirements of subdivisions c and d of subsection 1 of section 53-12-13, and each officer and director and each shareholder who owns five percent or more of an ownership interest in the organization must meet the requirements of subdivisions a and b of subsection 1 of section 53-11-13 and of section 53-12-14.

53-12-17. Lottery advisory commission created - Appointment of members - Term of office - Qualifications - Chairman - Duties - Compensation - Restrictions - Penalty.

1. There is created the North Dakota lottery advisory commission, which is composed of five members, three of which are selected by the chairman of the legislative council and two of which are selected by the attorney general. The term of office is three years, expiring on December thirty-first 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 of the advisory commission 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 advisory commission each year.

2. The advisory commission shall meet at least once a quarter and any additional meetings as the chairman deems necessary. Special meetings may be called by the chairman upon the written request of the director or any three members of the commission.
3. The advisory commission shall advise the director and the attorney general in the establishment of policy of the operation of the lottery and shall advise the director regarding the operation of the lottery. For the initial selection of lottery retailers, the commission may recommend, for the director's consideration, lottery retailer applicants for licensure based on criteria prescribed by section 53-12-09.
4. Members of the advisory commission who are not state employees are entitled to be compensated at a rate of seventy-five dollars per day and are entitled to mileage and expenses as provided by law for state officers and employees. A state employee who is a member of the commission must receive that employee's regular salary and is entitled to mileage and expenses, to be paid by the employing agency.
5. No member of the advisory commission, employee of the North Dakota lottery, or any individual residing in the same household as either of those individuals may directly or indirectly, individually, as a member of a partnership or other association, or as a stockholder, director, or officer of a corporation, have an interest in a business which contracts for the operation or promotion of the lottery. A knowing violation of this section is a class B misdemeanor.

53-12-18. Rules. The attorney general shall adopt rules governing the establishment and operation of the lottery as necessary to carry out the purposes of this chapter. The attorney general may adopt emergency rules for purposes of this section without the grounds otherwise required under section 28-32-03. The attorney general shall adopt rules concerning the following:

1. The manner of payment of prizes to the holders of winning tickets;
2. The types of locations at which tickets may be sold;
3. The methods to be used in selling tickets;
4. Additional qualifications for the selection of retailers and the amount of application fees to be paid by each;
5. The amount and method of compensation to be paid to retailers, including special bonuses and incentives;
6. Deadlines for claims for prizes by winners of each lottery game, however, in no instance may the deadline be for more than one year;
7. Financial responsibility of persons licensed under this chapter;
8. Licensing procedures; and
9. Any other matters necessary or desirable for the efficient or economical operation of the lottery or for the convenience of the public.

53-12-19. Lottery operating fund established - Continuing appropriation - Informational budget - Authorization of disbursements - Purposes. There is established within the state treasury the lottery operating fund into which must be deposited all revenues from the sale of lottery tickets, interest received on moneys in the lottery operating fund, and all other fees and moneys collected. All money in the funds created by this section are continuously appropriated for the purposes specified in this section. Any disbursement from the lottery operating fund must be by authorization of the director for any of the following purposes:

1. The payment of prizes to the holders of valid, winning lottery tickets. A revolving fund, designated as the "lottery prize payment fund", must be set apart and maintained by the director and held by the state treasurer for the payment of prizes;
2. Expenses of the lottery, which include all costs incurred in the operation and administration of the lottery; all costs resulting from contracts entered into for the purchase or lease of goods and services needed for operation of the lottery, including supplies, materials, tickets, independent studies and surveys, data transmission, advertising, printing, promotion, incentives, public relations, communications, and compensation paid to lottery retailers; distribution of tickets; and reimbursement of costs of facilities and services provided by other state agencies; and
3. Transfers of net proceeds as provided by section 53-12-21.

53-12-20. Amount from sale of tickets allocated for payment of prizes - Means of payment for prizes. As nearly as practical, a minimum of fifty percent of the projected revenue from the sale of lottery tickets, computed on a year-round basis from the sale of on-line lottery games, must be allocated for payment of prizes. The director shall award the designated prize to the holder of the ticket upon validation of a winning claim ticket. The director may make payment for prizes by any means the director deems appropriate upon the validation of winning tickets.

53-12-21. Net proceeds transfers. Five percent of the gross profits generated from the sale of lottery tickets, not to exceed four hundred thousand dollars per biennium, must be transferred to the state treasurer for deposit in the compulsive gambling prevention and treatment fund. The net proceeds, less the amount allocated to the compulsive gambling prevention and treatment fund and a 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.

53-12-22. Counterfeiting lottery tickets - Penalty. Any person who, with intent to defraud, falsely makes, alters, forges, passes, or counterfeits a lottery ticket issued by the North Dakota lottery under this chapter is guilty of a class C felony.

53-12-23. Sale of tickets at price greater than that fixed by rules prohibited - Sale by authorized retailer only - Penalty. No person may sell a lottery ticket at a price greater than that fixed by the rules adopted under this chapter. No person other than a retailer licensed by the North Dakota lottery may sell or resell lottery tickets. Any person convicted of violating this section is guilty of a class A misdemeanor on the first offense and a class C felony on the second or subsequent offense.

53-12-24. Sale of ticket to minor prohibited - Violation. No lottery ticket may be sold or given to a minor. Any retailer, employee of a retailer, or any other person who knowingly sells or offers to sell or give a lottery ticket to a minor is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on the second or subsequent offense.

53-12-25. Purchase of ticket or payment of prize to certain persons prohibited - Exceptions - Penalty.

1. A lottery ticket may not be purchased by, and a prize may not be paid to, any of the following individuals or to any immediate family member of the following persons:
 - a. Any member of the advisory commission or employee of the North Dakota lottery, unless authorized in writing by the director; or
 - b. Any officer or employee of a business that is currently engaged in supplying equipment, supplies, or services being used directly in the operation of any lottery conducted pursuant to this chapter, unless authorized in writing by the director.
2. This section does not prohibit any retailer or the retailer's employee from purchasing lottery tickets or from being paid a prize of a winning ticket.
3. Any person who knowingly violates this section is guilty of a class B misdemeanor on the first offense and a class A misdemeanor on the second or subsequent offense.

53-12-26. Prize paid to holder of winning ticket - Deceased winner's prize paid to representative - Prizes subject to taxation - Liability of lottery after payment of prize. The prize to be paid or awarded for each winning ticket must be paid to the person that is adjudged by the director to be the holder of the winning ticket. However, the prize of a deceased winner must be paid to the lawful representative of the estate of the winner. All prizes awarded are subject to state and federal income tax laws and regulations. The state, members of the advisory commission, and employees of the North Dakota lottery are discharged of all further liability upon payment of a prize under this section.

53-12-27. Lottery products on Indian reservations. The North Dakota lottery may license a retailer within the exterior boundaries of Indian reservations or on tribal trust land referenced by the tribal-state gaming compacts in effect within the state.

53-12-28. Confidentiality of lottery records.

1. The following information and records of the North Dakota lottery are confidential:
 - a. Sales and income tax information, financial statements, and credit reports of retailer applicants and persons seeking or doing business with the lottery, and application information other than an applicant's name and retail location;
 - b. Information related to persons owing a debt to the state or having a debt collected through a state agency made confidential by another state law or rule remains confidential under this section;

- c. Internal control and security procedures and information on bids 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 unless the player authorizes, in writing, release of the information; and
 - e. Sales data, the disclosure of which is harmful to the competitive position of the lottery, retailers, or persons seeking or doing business with the lottery.
2. To be confidential, the information must be necessary to the security and integrity of the lottery. The information and records may be disclosed within the attorney general's office or to authorized persons in the proper administration of this chapter or lottery rule or in accordance with a judicial order. Criminal history record check information on a retailer applicant or person seeking or doing business with the lottery may be disseminated only according to chapter 12-60.

53-12-29. Lottery setoff program established - Computerized file of persons owing state. The director shall establish a liability setoff program by which lottery prize payments may be used to satisfy debts owed or collected through state agencies. Any participating state agency, on a monthly basis, shall provide the director a computerized file of persons owing a debt to or collected through that state agency which contains the following information: the first name, last name, middle initial, social security number, and the amount and type of the debt.

53-12-30. Debt setoff from prize due - Time limitation - Transfer of setoff amount to agency. The director shall match the information submitted by the agency with persons who are entitled to a lottery prize payment in an amount equal to or greater than six hundred dollars. If there is a match, the director shall set off the amount of the debt from the prize due and notify the person of the setoff. If the setoff accounts for only a portion of the prize due, the remainder of the prize shall be paid to the person. The director shall transfer the setoff amount to the agency unless the person notifies the director, in writing, no later than thirty days after receiving the notice of the setoff that the person disputes all or a part of the debt owed or to be collected by the state agency.

53-12-31. Advisory commission, employees, and lottery discharged from liability. The members of the advisory commission, director, employees, and the North Dakota lottery are discharged of all further liability for the amount of any setoff paid to a state agency.

53-12-32. Apportionment of prize among agencies - Priority of child support payments. If two or more agencies have delinquent accounts for the same person, the director shall apportion the prize equally among them. However, a setoff to the department of human services for child support payments has priority over all other setoffs.

53-12-33. Collection of remainder of debt. If the prize is insufficient to satisfy the entire debt, the remainder of the debt may be collected by the agency as provided by law and resubmitted for setoff against any other prize awarded.

53-12-34. Voluntary deposit of adverse claims to prize payment or award. Notwithstanding sections 53-12-20, 53-12-24, 53-12-26, 53-12-30, and 53-12-32, if two or more persons or state agencies make adverse claims to all or a

part of a prize payment or award, upon receipt of written notice from the claimants setting forth their respective claims, the director may deposit, in accordance with section 32-11-02, the contested amount of the prize payment or award with the clerk of court in the district in which an action pertaining to the contested amount is pending or with a court-authorized depository. Upon making the deposit, the state and its officials and employees are discharged and relieved from further liability to any person or agency on account of the prize payment or award.

²⁰⁴ **SECTION 4. AMENDMENT.** Subsection 2 of section 54-10-01 of the North Dakota Century Code is amended and reenacted as follows:

2. Perform or provide for the audit of the general purpose financial statements and a review of the material included in the comprehensive annual financial report of the state and perform or provide for the audits and reviews of state agencies. The Except for the annual audit of the North Dakota lottery required by section 53-12-07, the state auditor shall audit or review each state agency once every two years. The state auditor shall determine the contents of the audits and reviews of state agencies. The state auditor may conduct any work required by the federal government. The state auditor shall charge an amount equal to the cost of the audit and other services rendered by the state auditor to all agencies that receive and expend moneys from other than the general fund. This charge may be reduced for any agency that receives and expends both general fund and non-general fund moneys. Audits and reviews may be conducted at more frequent intervals if requested by the governor or legislative audit and fiscal review committee.

²⁰⁵ **SECTION 5.** A new subsection to section 57-38-57 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner, upon written request from the director of the North Dakota lottery, may provide a written statement to the director, employees, or agents of the North Dakota lottery, in which the tax commissioner is limited to stating that the lottery retailer applicant has complied or not complied with the requirements of this chapter. The information obtained under this subsection is confidential and may be used for the sole purpose of determining whether the applicant meets the requirements of subdivision d of subsection 1 of section 53-12-13 and subdivision d of subsection 1 of section 53-12-14.

²⁰⁴ Section 54-10-01 was also amended by section 3 of Senate Bill No. 2004, chapter 25.

²⁰⁵ Section 57-38-57 was also amended by section 2 of House Bill No. 1115, chapter 441.

²⁰⁶ **SECTION 6.** A new subsection to section 57-39.2-04 of the North Dakota Century Code is created and enacted as follows:

Gross receipts from the sale of lottery tickets under chapter 53-12.

SECTION 7. A new subsection to section 57-39.2-23 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner, upon written request from the director of the North Dakota lottery, may provide a written statement to the director, employees, or agents of the North Dakota lottery, in which the tax commissioner is limited to stating that the lottery retailer applicant has complied or not complied with the requirements of this chapter. the information obtained under this subsection is confidential and may be used for the sole purpose of determining whether the applicant meets the requirements of subdivision d of subsection 1 of section 53-12-13 and subdivision d of subsection 1 of section 53-12-14.

SECTION 8. ATTORNEY GENERAL REIMBURSEMENT - STARTUP EXPENSES. During the biennium beginning July 1, 2003, and ending June 30, 2005, the attorney general's operating fund must be reimbursed from lottery gross profits, in an amount not to exceed \$85,000, for expenses associated with the startup of the lottery which were incurred before July 1, 2003.

SECTION 9. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 4, 2003
Filed April 4, 2003

²⁰⁶ Section 57-39.2-04 was also amended by section 1 of House Bill No. 1328, chapter 536, section 21 of House Bill No. 1426, chapter 96, section 6 of Senate Bill No. 2096, chapter 539, section 7 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, section 10 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.

STATE GOVERNMENT

CHAPTER 455

HOUSE BILL NO. 1275

(Representatives Iverson, Carlson, Ruby)
(Senators Brown, Freborg)

STATE EMPLOYEE MOVING EXPENSES

AN ACT to amend and reenact section 54-01.1-03 of the North Dakota Century Code, relating to moving and related expenses as a result of projects undertaken by a state agency; to provide an expiration date; and to declare an emergency.

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. 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~~ 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. ~~Such~~ The 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.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2007, and after that date is ineffective.

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

Approved April 9, 2003
Filed April 9, 2003

CHAPTER 456**SENATE BILL NO. 2318**

(Senators Epegard, Christenson, Holmberg)
(Representative Glassheim)

NORTH DAKOTA ART MUSEUM DESIGNATED

AN ACT to amend and reenact section 54-02-11 of the North Dakota Century Code, relating to designation of the North Dakota art museum.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-02-11 of the North Dakota Century Code is amended and reenacted as follows:

54-02-11. State art gallery - Ownership of art museum. The North Dakota museum of art, formerly the university of North Dakota art galleries, established in 1972 on the university campus in Grand Forks, is hereby designated the North Dakota state art gallery museum. ~~No general fund moneys may be used to support the North Dakota art gallery now or in the future.~~ Unless clear title is otherwise demonstrable, any work of art, artifact, or artistic property located in the state art gallery museum is deemed to be the property of the North Dakota ~~museum of art museum~~ and is subject to disposition by the North Dakota ~~museum of art museum~~.

Approved March 21, 2003
Filed March 24, 2003

CHAPTER 457

SENATE BILL NO. 2138

(Government and Veterans Affairs Committee)
(At the request of the Secretary of State)

FILING OF CERTIFICATES OF ELECTION

AN ACT to amend and reenact section 54-03-03 of the North Dakota Century Code, relating to filing certificates of election and appointments with the legislative assembly and making the roll of members of the legislative assembly.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03-03 of the North Dakota Century Code is amended and reenacted as follows:

54-03-03. Secretary of senate and chief clerk of house to receive certifications and to make roll of members - ~~Certificate~~ Certificates filed. ~~The~~ At the opening of each organizational session, reconvened session, or special session of the legislative assembly, the secretary of state shall certify to the secretary of the senate and the chief clerk of the house of representatives, at the opening of each organizational session, shall make a correct roll of the respective members of their houses respectively to whom certificates of election have been issued by the proper officers or whose appointments have been filed with the secretary of state under applicable provisions of law since the preceding session of the legislative assembly. The certificates must be filed by the secretary of the senate and chief clerk. Each certificate is shall file the certifications and copies of the certificates of election or appointment, and the certifications and copies of the certificates of election or appointment are prima facie evidence of the right to membership in the respective branch of the legislative assembly of the person certified therein to be elected for all purposes of the organization of either branch of the legislative assembly. The secretary of state shall also certify to the secretary of the senate and the chief clerk of the house of representatives the respective members who served in the preceding session of the legislative assembly and whose terms have not expired. After the certifications are received, the secretary of the senate and the chief clerk of the house of representatives shall call and make a correct roll of the names of those respective members who have been certified by the secretary of state. The provisions of this section may not be construed to infringe on the right of each house to be the judge of the qualifications of its members.

Approved March 21, 2003
Filed March 24, 2003

CHAPTER 458

SENATE BILL NO. 2051 (Legislative Council) (Legislative Management Committee)

ORGANIZATIONAL SESSION AGENDA

AN ACT to amend and reenact section 54-03.1-03 of the North Dakota Century Code, relating to the agenda of the organizational session.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-03.1-03 of the North Dakota Century Code is amended and reenacted as follows:

54-03.1-03. Agenda. The agenda of the organizational session must include, ~~but is not limited to,~~ the following:

1. Orientation classes upon legislative rules and procedure for new legislators;
2. Presentation of reports by legislative interim ~~boards or committees or commissions;~~
3. Party caucuses to determine which party has a majority in each house of the legislative assembly and thereafter proceed to select party nominees for officers of each body review proposed legislative rules and committee assignments, as appropriate;
4. Appointment of ~~employment procedural~~ committees to process applications for positions of employment with the legislative assembly and make recommendation for hiring the selected employees;
5. ~~Appointment of a senate committee on committees;~~
6. ~~Each legislator shall present the legislator's committee appointment preferences to the speaker of the majority party or the chairman of the interim senate committee on committees;~~
7. ~~Presentation of the budget and revenue proposals recommended by the governor as provided in section 54-44.1-07; and~~
8. 6. All other similar matters, in order that the legislative assembly be fully organized and ready to begin its business by the first day of the regular session.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 459

HOUSE BILL NO. 1167

(Government and Veterans Affairs Committee)
(At the request of the Secretary of State)

REPORTS TO GOVERNOR OR SECRETARY OF STATE

AN ACT to amend and reenact sections 4-05.1-04, 26.1-21-22, 43-25-13, and 43-32-11, subsection 4 of section 54-06-04, and section 54-54-09 of the North Dakota Century Code, relating to reports by agricultural research or research extension centers, the state bonding fund, the board of massage therapists, the board of psychologist examiners, the council on the arts, and other entities submitted to the governor or secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-05.1-04 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-04. Reports. Each center director shall submit an annual report to the station director as directed by the state board of agricultural research and education. Each report must set forth in detail the investigations and experiments made during the preceding year, recommendations for the welfare of the center, the financial condition of the center, how all moneys have been expended, and the results of experiments. The station director shall submit these reports, with a report of the North Dakota state university main research center, to the state board of agricultural research and education and the state board of higher education on or before the first day of September of each year. ~~If the state board of higher education submits a biennial report to the governor and the secretary of state in accordance with section 54-06-04, the report must include a composite of the reports from the main research center and each research extension center.~~

SECTION 2. AMENDMENT. Section 26.1-21-22 of the North Dakota Century Code is amended and reenacted as follows:

26.1-21-22. Publication of statement of fund - Biennial report. The commissioner, on or about December first in each odd-numbered year, shall publish in four newspapers of general circulation within the state a copy of the statement of the commissioner's work and of the condition of the fund during the two preceding fiscal years. The commissioner shall ~~submit a~~ include this statement in the biennial report ~~to the governor and the secretary of state~~ submitted in accordance with section 54-06-04.

SECTION 3. AMENDMENT. Section 43-25-13 of the North Dakota Century Code is amended and reenacted as follows:

43-25-13. Records to be kept by the secretary-treasurer of the board. The secretary-treasurer of the board shall keep a record book of the names of all persons to whom licenses have been granted under this chapter, the license number of each, the date of granting each license and renewal, and other matters of record. Any official entry or a certificate of the absence of information, certified under the hand of the secretary-treasurer and the seal of the board, must be admitted as evidence in any of the courts of this state. The secretary-treasurer shall furnish to

any person a certified copy of any record upon payment of a fee of ten dollars plus twenty-five cents per page copied, the fee to belong to the secretary-treasurer. The secretary-treasurer ~~shall~~ may prepare and submit to the governor a biennial report detailing income and expenses and a list of massage therapists licensed.

SECTION 4. AMENDMENT. Section 43-32-11 of the North Dakota Century Code is amended and reenacted as follows:

43-32-11. Annual reports. Each year, the board ~~shall~~ may transmit to the governor, with a copy thereof to the secretary of state and to the North Dakota psychological association, a full report of all activities under this chapter, together with a report of all receipts and disbursements.

SECTION 5. AMENDMENT. Subsection 4 of section 54-06-04 of the North Dakota Century Code is amended and reenacted as follows:

4. All officers, departments, boards, commissions, and state institutions that submit reports covering their operations for the two preceding fiscal years to the governor and the secretary of state shall submit copies of their reports in the form and style, using the materials, and having the content prescribed under subsection 2 on or before the first day of December in each year after the regular session of the legislative assembly. If submitted, one copy of each report must be also distributed to the following agencies:
 - a. ~~Governor's office.~~
 - b. Legislative council.
 - e. b. Office of management and budget.
 - d. c. State law library.
 - e. d. The libraries of each state institution of higher education.
 - f. ~~State library.~~
 - g. e. State archivist for official and public use.

SECTION 6. AMENDMENT. Section 54-54-09 of the North Dakota Century Code is amended and reenacted as follows:

54-54-09. Report. The council shall ~~make~~ submit a biennial report ~~to the governor, secretary of state, and the legislative assembly not later than October first prior to each legislative session~~ as provided in subsection 1 of section 54-06-04. The report is also subject to the requirements of subsections 2, 4, and 5 of section 54-06-04.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 460

SENATE BILL NO. 2106

(Government and Veterans Affairs Committee)

(At the request of the Office of Management and Budget)

SICK LEAVE PAYMENT UPON TERMINATION

AN ACT to amend and reenact section 54-06-14 of the North Dakota Century Code, relating to payment of sick leave upon termination.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-06-14 of the North Dakota Century Code is amended and reenacted as follows:

54-06-14. Annual leave and sick leave for state employees. Annual leave and sick leave must be provided for all persons in the permanent employment of this state who are not employed under a written contract of hire setting forth the terms and conditions of their employment, within the limitations, terms, and provisions of this section. Annual leave for an employee entitled to it must be within a range of a minimum of one working day per month of employment to a maximum of two working days per month of employment, based on tenure of employment, to be fixed by rules adopted by the employing unit. Sick leave for an employee entitled to it must be within a range of a minimum of one working day per month of employment to a maximum of one and one-half working days per month of employment, based on tenure of employment, to be fixed by rules adopted by the employing unit. Annual leave must be compensated for on the basis of full pay for the number of working days' leave credited to the employee. Sick leave must be compensated for on the basis of full pay for absence due to illness on working days during tenure of employment. An employee with at least ten continuous years of state employment is entitled to a lump sum payment equal to one-tenth of the pay attributed to the employee's unused sick leave accrued under this section. An employee's years of state employment must be deemed continuous if, under the official personnel policy of an agency, unit, or entity, the employee's work is terminated because of a reduction in force and the employee is reinstated in any agency, unit, or entity within two years, or if the employee is placed on voluntary leave status without pay and the leave lasts no longer than two years for education purposes, or one year for any other voluntary leave without pay. The pay attributed to the accumulated, unused sick leave must be computed on the basis of the employee's salary or wage at the time the employee leaves the employ of the state and at the rate of one hour of pay for each hour of unused sick leave. The agency, unit, or entity that last employed the employee shall make the lump sum payment from funds appropriated by the legislative assembly to that agency, unit, or entity for salaries and wages. Any state agency, unit, or entity which employs persons subject to this section shall formulate and adopt rules governing the granting of annual leave and sick leave which will effectuate the purpose of this section and best suit the factors of employment of that employing unit. Each employing unit shall file with the office of management and budget a copy of the rules adopted, including any amendments or additions to the rules.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 461

SENATE BILL NO. 2108

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

STATE EMPLOYEES COMPENSATION COMMISSION VACANCIES

AN ACT to amend and reenact subsection 2 of section 54-06-25 of the North Dakota Century Code, relating to filling state employees compensation commission vacancies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁰⁷ **SECTION 1. AMENDMENT.** Subsection 2 of section 54-06-25 of the North Dakota Century Code is amended and reenacted as follows:

2. The governor or the governor's designee is a member of the commission and serves as chairman. Four members of the legislative assembly appointed by the chairman of the legislative council are members of the commission. Four state employees are members of the commission, three of whom must be members of the classified service of the state and one of whom must be a member of the nonclassified service of the state. The central personnel division shall conduct the election for the employee representatives. All elected commission members serve for a term of four years and may be reelected for additional terms of office. All appointed commission members serve for a term of two years and may be reappointed for additional terms of office. The state employee members' terms begin on October first of the year they are elected. The terms of office of members who are members of the legislative assembly and the governor's designee begin on October first of each odd-numbered year. Before the conclusion of each term, an election must be held to replace the two members whose terms will end in that year. The terms of those commission members elected on July 1, 1996, expire on September 30, 1999. No more than one employee from the same institution of higher education or agency may serve on the commission at the same time. If two or more employees from the same institution of higher education or agency appear on the ballot at the same time, the employee with the highest vote total is elected to the position. If a member of the commission moves to another agency where another current member of the commission is employed, then the moving member must resign. Vacancies among the elected members on the commission must be filled by the eligible person who received the next highest vote total in the previous election. If the eligible person is not available, the chairman of the commission may call a special election to fill the vacancy for the remainder of the unexpired term of the position vacated.

²⁰⁷ Section 54-06-25 was also amended by section 4 of Senate Bill No. 2092, chapter 493.

The special election to fill a vacancy in an unexpired term must be conducted in the same manner as provided in this section. Vacancies among the legislative members of the commission may be filled for the remainder of the unexpired term by appointment by the chairman of the legislative council.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 462

HOUSE BILL NO. 1093

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

STATE EMPLOYEE BONUS PROGRAMS

AN ACT to amend and reenact sections 54-06-30 and 54-06-31 of the North Dakota Century Code, relating to state employee bonus programs for performance and recruitment and retention programs; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-06-30 of the North Dakota Century Code is amended and reenacted as follows:

54-06-30. (Effective through June 30, 2005) State employee performance bonus program - Criteria - Limitations. State agencies may provide monetary performance bonuses to their ~~classified state~~ employees under this section.

1. State agencies may pay bonuses under this section if:
 - a. The agency has had a written employee performance evaluation policy in place for more than one year before paying the bonus;
 - b. The written employee performance evaluation policy required in subdivision a must have at least three levels of performance criteria; and
 - c. The agency performance bonus program adopted under this section must be a written policy and must be communicated to each ~~classified~~ employee in the agency. Development of the written policy must include input from employees.
2. ~~Classified state~~ State employees are eligible to receive a bonus under this section only if:
 - a. The employee has held a ~~classified~~ position in state government for at least one year before a bonus is paid;
 - b. The employee's overall annual performance evaluation satisfies the agency's performance bonus program criteria for receiving a bonus; and
 - c. The employee is a full-time or part-time regular nonprobationary employee holding a regularly funded nontemporary position ~~in the classified service~~.
3. A ~~classified~~ An employee may not receive more than one performance bonus per fiscal year and may not receive more than one thousand dollars in bonuses per biennium.

4. Agencies may pay bonuses under this section during a fiscal year to not more than the number of ~~classified~~ employees equal to twenty-five percent of the ~~classified~~ employees employed by the agency on July first at the beginning of each state fiscal year. Each agency must fund the performance bonus program from within its agency budget for salaries and wages.
5. Bonuses paid under this section may not be included in an employee's base salary for purposes of calculating any wage or salary increase.
6. Bonuses paid under this section are not fiscal irregularities under section 54-14-03.1.

SECTION 2. AMENDMENT. Section 54-06-31 of the North Dakota Century Code is amended and reenacted as follows:

54-06-31. (Effective through June 30, 2003) State employee recruitment and retention bonus ~~pilot~~ programs - Criteria - Limitations. State agencies may develop ~~pilot~~ programs to provide bonuses to recruit or retain ~~classified state~~ employees in hard-to-fill occupations.

1. State agencies may pay recruitment and retention bonuses under this section only if:
 - a. The agency has a written policy in place identifying eligible positions or occupations and provisions for providing and receiving bonuses;
 - b. The agency has filed a copy of the written policy with the central personnel division; and
 - c. The agency reports to the central personnel division each bonus provided to an employee under the ~~pilot~~ program.
2. State agencies must fund bonus ~~pilot~~ programs from within its agency salaries and wages budget.
3. The central personnel division shall periodically report to a legislative committee designated by the legislative council on the implementation, progress, and bonuses provided under agency recruitment and retention bonus ~~pilot~~ programs.
4. Bonuses paid under this section are not fiscal irregularities under section 54-14-03.1.

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

Approved March 20, 2003
Filed March 20, 2003

CHAPTER 463**SENATE BILL NO. 2050**

(Legislative Council)
(Legislative Management Committee)

GOVERNOR TO RECEIVE BILLS

AN ACT to create and enact a new section to chapter 54-07 of the North Dakota Century Code, relating to the duties of the governor; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-07 of the North Dakota Century Code is created and enacted as follows:

Governor to receive bills. The governor shall accept delivery of bills passed by the legislative assembly and presented to the governor during regular business hours. The governor may coordinate with the presiding officer of the senate or the presiding officer of the house of representatives with respect to the delivery of senate or house bills outside normal business hours or during times the governor anticipates being out of the office for more than three legislative days.

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

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 464**SENATE BILL NO. 2072**
(Government and Veterans Affairs Committee)
(At the request of the Secretary of State)**SECRETARY OF STATE FEES AND SERVICE OF
PROCESS**

AN ACT to create and enact a new section to chapter 54-09 of the North Dakota Century Code, relating to fees to be paid to the secretary of state by government officials when performing their duties; and to amend and reenact sections 54-09-04 and 54-09-07 of the North Dakota Century Code, relating to fees charged by and service of process on the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-09-04 of the North Dakota Century Code is amended and reenacted as follows:

54-09-04. Fees. The secretary of state, unless otherwise provided by law, shall charge and collect the following fees:

1. For a copy of any law, resolution, record, or other document or paper on file in the secretary of state's office, one dollar for every four pages or fraction thereof.
2. For affixing the signature of the secretary of state, certificate, or seal, or combination thereof to any document, ten dollars.
3. For filing a certificate of appointment of attorney, five dollars.
4. For searching records and archives of the state, five dollars. For the purposes of this section, a search of records conducted by the secretary of state for which a fee must be collected includes the following:
 - a. A search of a filed document that is active or archived, an archived index, or an index of business name changes to identify specific information to satisfy a request;
 - b. A search of any record for which written verification of the facts of the search is required; and
 - c. For every search of records when the request for the search is contained in a list compiled by the requester.

The secretary of state may provide, at no charge, information from publications or reference materials published or maintained by the secretary of state and verbal confirmation of any element of information maintained in a computer data base.

5. For filing any paper not otherwise provided for, ten dollars.

6. For filing utility property transfers, five dollars, and issuing a certificate of filing, five dollars.
7. For sending a copy of a document by electronic transmission, one dollar for each page.
8. For filing any process, notice, or demand for service, twenty dollars.
9. For preparing any listing or compilation of any information recorded or filed in the office of the secretary of state, thirty-five dollars plus the actual cost for assembling and providing the information on the medium requested.

~~A member of the legislative assembly of a state or county officer may not be charged for any search relative to matters appertaining to duties of office, any fee for a certified copy of any law or resolution passed by the legislative assembly relative to the individual's official duties, or for filing any process, notice, or demand for service.~~ An individual required to file an oath of office with the secretary of state may not be charged for filing the oath of office, nor may a state or county officer be charged for filing any document with the secretary of state when acting in the officer's official capacity. All fees when collected must be paid by the secretary of state into the state treasury at the end of each month and placed to the credit of the state. Unless otherwise provided by law, the secretary of state shall retain a handling charge from filing fees tendered when a document submitted to the secretary of state under any law is rejected and not perfected. The handling charge is five dollars or fifty percent of the filing fee, whichever is greater, but may not exceed one hundred dollars. This section does not apply to fees submitted for filing in, or information obtained from, the computerized central notice system, to the computerized Uniform Commercial Code central filing data base, or to the computerized statutory liens data base.

SECTION 2. A new section to chapter 54-09 of the North Dakota Century Code is created and enacted as follows:

Exception from fees. A member of the legislative assembly or a state or county office may not be charged by the secretary of state for any search relative to matters appertaining to duties of office, any fee for a certified copy of any law or resolution passed by the legislative assembly relative to the individual's official duties, or for filing any process, notice, or demand for service relative to the individual's official duties.

SECTION 3. 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 ~~an original and two~~ 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.

Approved April 8, 2003

Filed April 9, 2003

CHAPTER 465

HOUSE BILL NO. 1100

(Judiciary Committee)
(At the request of the State Auditor)

STATE AUDITOR DUTIES

AN ACT to amend and reenact sections 54-10-21, 54-11-04, and 54-27-08 of the North Dakota Century Code, relating to the duties of the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-21 of the North Dakota Century Code is amended and reenacted as follows:

54-10-21. Duty of state auditor on failures by officers. The state auditor ~~shall~~ may report to the attorney general the refusal or neglect of any state ~~or county~~ officer to obey the state auditor's ~~instructions, and recommendations.~~ After investigation, the attorney general promptly shall may take appropriate action to enforce compliance therewith.

²⁰⁸ **SECTION 2. AMENDMENT.** Section 54-11-04 of the North Dakota Century Code is amended and reenacted as follows:

54-11-04. Records of state treasurer. The state treasurer shall keep the following records:

1. A ~~cash book in which must be entered the amount~~ record of all moneys received or paid out, showing from whom received or to whom paid and on what account or fund.
2. A ~~ledger in which~~ record that must ~~be kept~~ keep an account with each fund.
3. A daily balance ~~book in which~~ record that must ~~be shown~~ show the amount in state depositories and the amount in cash on hand.
4. ~~Such other books as the state auditor shall prescribe~~ The records may be created and published via electronic devices and must be in compliance with state audit guidelines.

These records must be disposed of in accordance with the procedures established pursuant to chapter 54-46.

SECTION 3. AMENDMENT. Section 54-27-08 of the North Dakota Century Code is amended and reenacted as follows:

²⁰⁸ Section 54-11-04 was also amended by section 3 of Senate Bill No. 2118, chapter 467.

54-27-08. How moneys paid from state treasury - Warrants - When not necessary. Except as otherwise provided, moneys may be paid from the state treasury only upon the warrant or order prepared by the office of management and budget drawn on the state treasurer. ~~The state auditor~~ director of the office of management and budget shall recommend a form for order and warrant-check of the state government which must conform, so far as consistent with statutory requirements, to approved banking practice to facilitate handling of such instruments by banks and other depositories. When an order and warrant-check is signed by the state auditor, the state treasurer shall accept the order or warrant with the treasurer's signature, making the order and warrant-check negotiable. No warrant upon the treasurer may be delivered or mailed to the payee or the payee's agent or representative until the warrant has been signed by the treasurer and entered on the treasurer's books as a check drawn on a bank depository. A record must be maintained specifying upon what fund or from what apportionment each warrant is to be paid. The state treasurer may redeem outstanding bonds or pay interest on bonds when due without the warrant of the office of management and budget, retaining the bond or interest coupon as a voucher for the payment until the next settlement. With respect to electronic records and electronic signatures, the state treasurer shall utilize the services provided by the information technology department.

Approved March 20, 2003

Filed March 20, 2003

CHAPTER 466**HOUSE BILL NO. 1051**

(Legislative Council)

(Legislative Audit and Fiscal Review Committee)

DRAFT AUDIT REPORT CONFIDENTIALITY

AN ACT to amend and reenact section 54-10-26 of the North Dakota Century Code, relating to draft audit reports prepared by the state auditor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-10-26 of the North Dakota Century Code is amended and reenacted as follows:

54-10-26. State auditor's working papers - Confidential. Working papers of the state auditor are not public records and are exempt from section 44-04-18. Working papers include records kept by the auditor of the procedures applied, the tests performed, the information obtained, draft audit reports, and the pertinent conclusions reached in the engagement. Working papers may be, at the discretion of the state auditor and unless otherwise prohibited by law, made available for inspection. A draft audit report released to the governing body or management of the audited entity is confidential until the final audit report is issued or work ceases on the audit. The issued audit report is public information. The working papers of an issued audit report are public. At the discretion of the state auditor, all or a portion of the working papers of an issued audit report may be declared confidential. ~~Such a~~ The declaration of confidentiality must state the reason for the confidentiality and the date, as can best be reasonably determined at the time, when ~~it~~ the working papers will be made public.

Approved April 16, 2003

Filed April 17, 2003

CHAPTER 467

SENATE BILL NO. 2118 (Government and Veterans Affairs Committee) (At the request of the State Treasurer)

STATE TREASURER DUTIES AND RECORDS

AN ACT to amend and reenact sections 1-02-35, 54-11-01, and 54-11-04 of the North Dakota Century Code, relating to warrants, duties, and records of the state treasurer; and to repeal section 54-11-03 of the North Dakota Century Code, relating to the redemption of warrants by the state treasurer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-02-35 of the North Dakota Century Code is amended and reenacted as follows:

1-02-35. Date of taking effect of code. This code is hereby declared to be an emergency measure and this code shall take effect and be in force immediately upon its passage by the legislative assembly and approval of the governor with the following exceptions: 4-01-14, 6-01-21.4, 6-09-17, 11-10-02, 11-10-06, 12-49-06, 15-21-02, 15-39-16, 15-39-21, 15-39-32, 15-40-07, 15-40-19, 15-40-20, 15-44-02, 15-44-03, 18-03-03, 18-03-04, 18-03-05, 18-03-07, 18-03-08, 18-04-02, 18-04-03, 18-04-05, 18-04-06, 18-05-12, 18-05-13, 19-01-08, 19-05-08, 19-05-09, 19-05-10, 20-13-07, 20-14-08, 24-02-12, 24-02-13, 24-02-37, 25-08-10, 25-08-11, 25-08-13, 25-08-14, 25-08-15, 25-08-16, 25-08-17, 25-08-19, 25-08-20, 25-08-21, 26-22-09, 27-07-02, 27-08-20, 27-18-01, 27-18-02, 27-18-03, 27-18-04, 27-18-05, 29-01-14, 29-07-06, 32-12-03, 32-12-04, 33-01-00.1, 33-01-08, 33-01-23, 33-03-12, 33-12-12, 36-22-09, 37-06-02, 37-06-03, 37-06-06, 37-15-13, 37-15-15, 39-03-08, 40-07-08, 40-14-01, 40-15-01, 40-18-01, 40-18-03, 40-18-05, 40-18-06, 40-18-07, 40-18-08, 40-18-10, 40-18-11, 40-18-13, 40-18-14, 40-18-16, 40-18-17, 40-18-18, 40-18-19, 50-06-14, 54-06-06, 54-06-08, 54-10-01, 54-10-02, 54-10-03, 54-10-04, 54-11-01, 54-11-02, ~~54-11-03~~, 54-12-07, 54-14-01, 54-14-02, 54-15-04, 54-15-05, 54-15-06, 54-15-08, 54-15-09, 54-15-13, 54-16-08, 54-16-09, 54-18-14, 54-23-06, 54-23-41, 54-26-14, 54-27-03, 54-27-04, 54-27-05, 54-27-06, 54-27-07, 54-27-08, 54-27-09, 54-27-11, 54-27-14, 54-27-15, 54-27-15.1, 54-27-15.4, 54-30-16, 55-01-04, 55-01-07, 57-37-24, 57-45-08, 58-05-02, 58-05-07, 61-02-13, and chapter 54-44, except that any portion of those above sections or chapters relating to state purchases and printing, the state printing commission and the state printer are effective upon the final passage and approval of this code. The equivalent sections of the North Dakota Revised Code of 1943 and the 1957 Supplement to the North Dakota Revised Code of 1943 of the above sections are in effect through June 30, 1961.

The following chapters and sections are repealed on July 1, 1961: chapters 10-08, 10-09, 10-10, 10-11, 54-13; sections 6-01-21, 11-10-03, 40-18-02, 54-10-05, 54-10-06, 54-10-07, 54-10-08, 54-10-09, 54-10-11, 54-15-12, 54-15-14, 54-21-15, 54-21-16, 54-27-15.2, and 65-02-10.

SECTION 2. AMENDMENT. Section 54-11-01 of the North Dakota Century Code is amended and reenacted as follows:

54-11-01. Duties of state treasurer. The state treasurer shall:

1. Receive and keep all the moneys belonging to the state not required to be received and kept by some other person.
2. Register the orders or certificates of the office of management and budget delivered to the state treasurer when moneys are paid or to be paid into the treasury.
3. Prepare a receipt for each deposit of money into the treasury. The receipt must show the amount, the source from which the money accrued, and the funds into which it is paid. The receipts must be numbered in order. Duplicates, if requested, must be delivered to the office of management and budget and the person paying money into the treasury.
4. Pay warrants drawn by the office of management and budget and signed by the state auditor out of the funds upon which they are drawn and in the order in which they are presented.
5. Keep an account of all moneys received and disbursed.
6. Keep separate accounts of the different funds.
7. Keep a record of all revenues and expenditures of state agencies and all moneys received and disbursed by the treasurer in accordance with the requirements of the state's central accounting system.
8. Receive in payment of public dues the warrants drawn by the office of management and budget and signed by the state auditor in conformity with law.
9. Redeem warrants drawn by the office of management and budget and signed by the state auditor in conformity with law, if there is money in the treasury appropriated for that purpose.
10. Report to the office of management and budget on the last day of each month the amount disbursed for the redemption of bonds and the payment of warrants during the month. The report must show:
 - a. The date and number of each bond and warrant;
 - b. The fund out of which each was paid; and
 - c. The balance in cash on hand in the treasury to the credit of each fund.
11. At the request of either house of the legislative assembly, or of any committee thereof, give information in writing as to the condition of the treasury, or upon any subject relating to the duties of office.
12. Submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, the report must show the exact balance in the treasury to the credit of the state. The report also must show in detail the receipts and disbursements, together with a summary thereof, the balances in the various funds at the beginning and ending of the biennium, and also must show where the funds of the

state are deposited. It must be certified by the state treasurer and approved by the governor.

13. Authenticate with the official state seal of the state treasurer all writings and papers issued from the treasurer's office.
14. ~~Keep a book in which the state treasurer shall enter all warrants paid, giving the name of the owner and the number and amount of each warrant.~~
45. Keep and disburse all moneys belonging to the state in the manner provided by law.
46. 15. Keep books of the state treasurer open at all times for the inspection of the governor, the state auditor, the commissioner of financial institutions, the office of management and budget, and any committee appointed to examine them by either house of the legislative assembly.
47. 16. Unless otherwise specified by law, credit all income earned on the deposit or investment of all state moneys to the state's general fund. This subsection does not apply to:
 - a. Income earned on state moneys that are deposited or invested to the credit of the industrial commission or any agency, utility, industry, enterprise, or business project operated, managed, controlled, or governed by the industrial commission.
 - b. Income earned by the Bank of North Dakota for its own account on state moneys that are deposited in or invested with the Bank.
 - c. Income earned on college and university funds not deposited in the state treasury.
48. 17. Perform all other duties as are prescribed by law.

²⁰⁹ **SECTION 3. AMENDMENT.** Section 54-11-04 of the North Dakota Century Code is amended and reenacted as follows:

54-11-04. Records of state treasurer. The state treasurer shall keep the following records:

1. A ~~cash book in which must be entered the amount~~ record of all moneys received or paid out, showing from whom received or to whom paid and on what account or fund.
2. A ~~ledger in which~~ record that must ~~be kept~~ keep an account with each fund.
3. A daily balance ~~book in which~~ record that must ~~be shown~~ show the amount in state depositories and the amount in cash on hand.

²⁰⁹ Section 54-11-04 was also amended by section 2 of House Bill No. 1100, chapter 465.

4. ~~Such other books as the state auditor shall prescribe~~ Records must be created and published via electronic devices and must be in compliance with state audit guidelines.

These records must be disposed of in accordance with the procedures established pursuant to chapter 54-46.

SECTION 4. REPEAL. Section 54-11-03 of the North Dakota Century Code is repealed.

Approved April 9, 2003
Filed April 9, 2003

CHAPTER 468**HOUSE BILL NO. 1350**

(Representatives Delmore, Nelson, Weiler)
(Senators Andrist, Bowman, Seymour)

**SPECIAL OPERATIONS TEAM REIMBURSEMENT
FUND**

AN ACT to create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to creation of a special operations team reimbursement fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

Special operations team reimbursement fund - Continuing appropriation.

The attorney general may establish a special operations team reimbursement fund of up to two hundred fifty thousand dollars consisting of federal funds and moneys obtained from cities and counties. The funds are appropriated as a standing and continuing appropriation to the attorney general for reimbursement to city and county governments that provide special operations team services to rural areas. The attorney general shall develop guidelines for the reimbursement of expenses to city and county governments providing special operations team services.

Approved April 4, 2003

Filed April 7, 2003

CHAPTER 469**SENATE BILL NO. 2151**

(Judiciary Committee)

(At the request of the Attorney General)

**CRIME LABORATORY TRANSFER TO ATTORNEY
GENERAL**

AN ACT to create and enact a new section to chapter 54-12 of the North Dakota Century Code, relating to transferring the state crime laboratory division including the state toxicologist to the office of the attorney general and to provide for transfer of related administrative rules; to amend and reenact sections 19-01-10 and 19-03.1-37, subsection 2 of section 28-32-01, sections 31-13-01, 31-13-03, 31-13-04, 31-13-05, 31-13-07, 31-13-08, and 31-13-09, and subsection 9 of section 39-20-07 of the North Dakota Century Code, relating to the state crime laboratory, the state toxicologist, and DNA testing; to repeal sections 12-60-21, 12-60-22, and 23-01-09.1 of the North Dakota Century Code, relating to the bureau of criminal investigation and the state toxicologist; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-01-10 of the North Dakota Century Code is amended and reenacted as follows:

19-01-10. Department to make analyses, inspections, and examinations - Report of examination as evidence - Publication of report. The department shall make, or cause to be made, analyses, examinations, and inspections of all products, articles, compositions, or things included under this title whenever such analyses, inspections, or examinations are necessary to determine whether any of such products, articles, compositions, or things violate this title relating to the products, articles, compositions, or things in question, or violate any definition, standard, tolerance, rule, or regulation issued with regard to such products, articles, compositions, or things pursuant to any provision contained in this title. ~~The department may also~~ However, the state crime laboratory shall make or cause to be made, analysis, examination, inspection, or test of any product, article, composition, or thing at the request of any prosecutor, defense counsel, or law enforcement officer in the state of North Dakota when such analysis, examination, inspection, or test is made in connection with an investigation into violations of the criminal law of this state. A copy of any report issued by the department or the state crime laboratory of the examination or analyses of any product, article, composition, or thing, duly authenticated by the ~~chemist~~ person making the analysis or examination, when given under oath, is prima facie evidence in all courts of the matters and facts therein contained. The department may collect samples of any product, article, composition, or thing for the purpose of making analyses, inspections, and investigations in connection with research carried on by it and may publish the reports thereof for the information of the public.

SECTION 2. AMENDMENT. Section 19-03.1-37 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-37. Burden of proof - Liabilities.

1. It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.
2. In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.
3. No liability is imposed by this chapter upon any authorized state, county, or municipal officer engaged in the lawful performance of the officer's duties.
4. In all prosecutions under this chapter, chapter 19-03.2, or chapter 19-03.4 involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the state toxicologist, or the toxicologist's designee, or the director of the ~~forensic sciences division of the state department of health~~ crime laboratory, or the director's designee, must be accepted as prima facie evidence of the results of the analytical findings.
5. 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 the state toxicologist or the director of the ~~forensic sciences division of the state department of health~~ crime laboratory, or any employee of either, to testify at the preliminary hearing and trial of the issue at no cost to the defendant. If the state toxicologist, the director of the ~~forensic sciences division of the state department of health~~ 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.
6. In all cases of conspiracy to violate chapter 19-03.1, 19-03.2, or 19-03.4, the state is not required to prove or establish that a conspirator knew the other person to the agreement intended to deliver or possess with intent to deliver a controlled substance, an imitation controlled substance, or drug paraphernalia to a third person.

²¹⁰ **SECTION 3. AMENDMENT.** Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees,

²¹⁰ Section 28-32-01 was also amended by section 1 of Senate Bill No. 2092, chapter 493, and section 5 of Senate Bill No. 2288, chapter 174.

or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

- a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the central personnel system as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
- b. The adjutant general with respect to the division of emergency management.
- c. The council on the arts.
- d. The state auditor.
- e. The department of commerce with respect to the division of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational technology council.
- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, North Dakota municipal bond bank, North Dakota mill and elevator association, and North Dakota farm finance agency.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The ~~state department of health~~ attorney general with respect to the state toxicologist.

- s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- v. The secretary of state with respect to rules adopted for the presidential preference contest under section 16.1-11-02.3.
- w. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

SECTION 4. AMENDMENT. Section 31-13-01 of the North Dakota Century Code is amended and reenacted as follows:

31-13-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Department" means the department of corrections and rehabilitation.
2. ~~"Division" means the forensic science division of the department of health.~~
3. "DNA" means deoxyribonucleic acid.
3. "Laboratory" means the state crime laboratory.

²¹¹ **SECTION 5. AMENDMENT.** Section 31-13-03 of the North Dakota Century Code is amended and reenacted as follows:

31-13-03. (Effective through July 31, 2004) 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 and 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 and any

²¹¹ Section 31-13-03 was also amended by section 1 of House Bill No. 1235, chapter 276.

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. 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 ~~state department of health~~ attorney general for deposit in the general fund.

(Effective after July 31, 2004) 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 and any person who is in the custody of the department on or after August 1, 1995, as a result of a conviction of one of these offenses to have a sample of blood and other body fluids taken by the department for DNA law enforcement identification purposes and inclusion in law enforcement identification data bases. Notwithstanding any other provision of law, if the sentencing court has not previously ordered a sample of blood and 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 and other body fluids as required by this section. Any person convicted on or after August 1, 1995, who is not sentenced to a term of confinement shall provide a sample of blood and other body fluids as a condition of the sentence or probation at a time and place specified by the sentencing court. The cost of the procedure must be assessed to the person being tested.

SECTION 6. AMENDMENT. Section 31-13-04 of the North Dakota Century Code is amended and reenacted as follows:

31-13-04. DNA testing - Procedure - Immunity - Penalty. The samples of blood and other body fluids for DNA testing must be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, medical technologist, or other qualified medical personnel approved by the ~~division,~~ laboratory and packaged and submitted in containers provided by the ~~division~~ laboratory and in accordance with rules adopted by the ~~division~~ laboratory. No civil or criminal liability may attach to any person authorized to draw blood and other body fluids as provided by this chapter as a result of the act of drawing blood and other body fluids from any person, provided the blood and other body fluids were drawn according to generally accepted medical procedures. Any person who tampers or attempts to tamper with any sample of blood or other body fluids or the collection container without lawful authority is guilty of a class C felony.

²¹² **SECTION 7. AMENDMENT.** Section 31-13-05 of the North Dakota Century Code is amended and reenacted as follows:

31-13-05. DNA data base established - How utilized. The ~~division~~ laboratory shall establish a centralized data base of DNA identification records for convicted sexual offenders. The established system must be compatible with the procedures set forth in the national DNA identification index to ensure data exchange on a national level. The centralized DNA data base must be used to assist federal, state, and local criminal justice and law enforcement agencies within and outside the state in the identification or prosecution of sex-related crimes. The ~~division~~ laboratory shall receive, analyze, and classify samples in compliance with section 31-13-04 and shall record the DNA result in a centralized data base for identification and statistical purposes. The ~~division~~ laboratory may contract with another laboratory for the analysis and classification of the samples. A report of the analysis certified by the ~~division~~ laboratory is admissible in any court as prima facie evidence of the facts stated in the report.

²¹³ **SECTION 8. 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 conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The ~~division~~ 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.

SECTION 9. AMENDMENT. Section 31-13-08 of the North Dakota Century Code is amended and reenacted as follows:

31-13-08. Rules. The ~~state department of health~~ attorney general shall adopt rules pursuant to chapter 28-32 necessary to carry out provisions of the DNA data base identification system. The rules must include procedures for collection, analysis, and classification of samples of blood and other body fluids, data base system usage and integrity, and methods for contracting with another laboratory for the analysis and classification of samples.

SECTION 10. AMENDMENT. Section 31-13-09 of the North Dakota Century Code is amended and reenacted as follows:

31-13-09. DNA profiles to be available to law enforcement - Penalty. Upon payment of a reasonable fee established by the ~~division~~ laboratory, the ~~division~~ laboratory shall provide, upon the request of appropriate law enforcement agencies for use for official purposes, an updated list of names of individuals whose DNA profiles are stored in the data base at the ~~division~~ laboratory. Any person who disseminates, receives, or otherwise uses or attempts to use information in the data

²¹² Section 31-13-05 was also amended by section 2 of House Bill No. 1235, chapter 276.

²¹³ Section 31-13-07 was also amended by section 3 of House Bill No. 1235, chapter 276.

base, knowing that the dissemination, receipt, or use is for a purpose other than as authorized by law, is guilty of a class A misdemeanor.

²¹⁴ **SECTION 11. 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 ~~forensic sciences division of the state department of health~~ 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.

SECTION 12. A new section to chapter 54-12 of the North Dakota Century Code is created and enacted as follows:

State crime laboratory division.

1. A state crime laboratory is created as a division of the office of the attorney general. This division consists of a director, the state toxicologist, and such other personnel as may be appointed by the attorney general. The state crime laboratory may establish and charge fees for services rendered. The state crime laboratory must be administratively separated from the bureau of criminal investigation. The director serves at the pleasure of the attorney general and is entitled to receive a salary set by the attorney general within the limits of legislative appropriation.
2. The state crime laboratory shall employ the services of a qualified toxicologist who must be the state toxicologist. The attorney general shall appoint the state toxicologist. The attorney general may appoint such qualified deputy state toxicologists as may be necessary to exercise the authority and responsibility prescribed by law for the state toxicologist. The results of toxicological or chemical testing or analysis, other than provided for in section 39-20-13, made by the state toxicologist at the request of law enforcement agencies for criminal investigation may not be disclosed directly or indirectly by the state toxicologist or any agent or employee of the attorney general to anyone other than the person or agency requesting the test or analysis or to any other person upon whom the toxicological or chemical test was performed or the person's authorized representative, except the state toxicologist may permit the inspection of the reports of any such test or analysis results by any other person having a proper interest therein as determined by the director of the state crime laboratory.

²¹⁴ Section 39-20-07 was also amended by section 7 of House Bill No. 1161, chapter 316.

3. Upon the request of the state forensic examiner, any state's attorney, sheriff, chief of police, coroner, or other local, state, or federal law enforcement official, the attorney general may make available to the requesting official the state crime laboratory's facilities and personnel to assist in the investigation or detection of crimes and the apprehension or prosecution of criminals.

SECTION 13. REPEAL. Sections 12-60-21, 12-60-22, and 23-01-09.1 of the North Dakota Century Code are repealed.

SECTION 14. ADMINISTRATIVE RULES RELATING TO THE STATE CRIME LABORATORY. The legislative council shall transfer administrative rules that the attorney general designates as relating to the state crime laboratory from the title of the North Dakota Administrative Code relating to the state department of health to the title of the North Dakota Administrative Code relating to the attorney general. The legislative council, after consulting the attorney general, may change references in any administrative rules to conform to this Act. These rules continue in effectiveness without promulgation under chapter 28-32 of the North Dakota Century Code. Any certifications, designations, or approvals made by the state toxicologist, including those made on or before the effective date of this Act, continue to be valid after the effective date.

SECTION 15. EFFECTIVE DATE. This Act is effective July 1, 2003.

SECTION 16. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 4, 2003
Filed April 4, 2003

CHAPTER 470

SENATE BILL NO. 2232

(Senators Espegard, Flakoll, Grindberg)
(Representative Nicholas)

STUDENT LOAN TRUST BONDS

AN ACT to amend and reenact section 54-17-25 of the North Dakota Century Code, relating to bonds of the student loan trust.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-17-25 of the North Dakota Century Code is amended and reenacted as follows:

54-17-25. Bonds authorized - Establishment of secondary market program. Whenever the industrial commission decides that it is in the public interest to diminish the investment of state funds in United States government guaranteed or reinsured or North Dakota guaranteed student loans, that it will be difficult to divest the state of appreciable amounts of such loans by piecemeal offering to the investing and saving public, that business conditions are favorable to a state-sponsored program to consolidate state-held student loans, and to enlarge private participation in such loans, or that the public will otherwise benefit, the commission may by plenary resolution duly adopted in accordance with the provisions hereof authorize preparation, sale, and issuance of revenue bonds of North Dakota in such amounts and at such times and in such form, which may include the issuance of bonds the interest income on which is subject to federal income taxes, as the commission shall determine to be for the public good. The industrial commission may issue subordinate or residual bonds in a total principal amount not to exceed twenty-three million dollars plus costs of issuance and any reasonably required reserve whenever the industrial commission determines that it is appropriate or expedient to do so and the bonds may contain such terms and provisions as the commission may determine. The commission may refund and refinance the bonds from time to time as often as it is advantageous and in the public interest to do so. The bonds shall be a ~~paramount~~ charge upon a sufficient designated portion of the resources of the student loan trusts, subject only to necessary administrative expenses of the trusts duly appropriated out of the interest earning resources thereof. The bonds may bear such rate or rates of interest as the commission may provide. The bonds must have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any county, municipality, or political subdivision therein. The bonds must be payable solely out of the separate resources generated respectively from collection of payments on and earnings and proceeds of United States government guaranteed or reinsured or North Dakota guaranteed student loans, and must respectively so recite. They are not indebtedness of the state of North Dakota or of any agency, board, department, or officer or agent thereof. Without limiting the foregoing, the commission may request the organization of a nonprofit corporation meeting the requirements of the Internal Revenue Code of 1954, as amended and redesignated as the Internal Revenue Code of 1986 [Pub. L. 99-54], and as it may be amended from time to time, and enter into one or more agreements with such corporation providing for the establishment of a secondary market program in the state of North Dakota for the acquisition by the corporation of such loans made pursuant to title IV, part B of the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353;

20 U.S.C. 1001 et seq.], as amended through December 31, 1996, as the commission shall, in its discretion, deem advisable.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 471**HOUSE BILL NO. 1339**
(Representatives Kempenich, Wald)
(Senators Dever, Erbele)**ELECTRICITY TRANSMISSION EXPORT CONSTRAINT
RESOLUTION**

AN ACT for resolution of electricity transmission export constraints.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Governmental public purpose - Electricity transmission export constraint priority. The legislative assembly finds and declares that it is an essential governmental function and public purpose to assist with the removal of electrical transmission export constraints and to assist with the upgrading and expansion of the region's electrical transmission grid in order to facilitate the development of the state's abundant natural resources for export to the region's consumers. The industrial commission shall give priority to those projects, processes, or activities that assist with the resolution of electricity transmission export constraints in this state.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 472

SENATE BILL NO. 2311

(Senators Wardner, Bowman, O'Connell)
(Representatives Rennerfeldt, Wald, Warner)

OIL AND GAS RESEARCH COUNCIL AND FUND

AN ACT to create and enact a new chapter to title 54 and a new section to chapter 57-51.1 of the North Dakota Century Code, relating to creating and establishing an oil and gas research council and oil and gas research fund; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 54 of the North Dakota Century Code is created and enacted as follows:

Definitions.

1. "Commission" means the North Dakota industrial commission.
2. "Council" means the oil and gas research council.

Oil and gas research council. There is created the oil and gas research council. The purpose of the council is to coordinate a program designed to demonstrate to the general public the importance of the state oil and gas exploration and production industry, to encourage and promote the wise and efficient use of energy, to promote environmentally sound exploration and production methods and technologies, to develop the state's oil and gas resources, and to support research and educational activities concerning the oil and natural gas exploration and production industry.

Commission to operate council. The commission shall operate, manage, and control the council.

Powers and duties of commission in managing and operating council. The commission is granted all the powers necessary or appropriate to carry out and effectuate the purposes of this Act, including the power to:

1. Make grants or loans, and to provide other forms of financial assistance as necessary or appropriate, to qualified persons for research, development, marketing, and educational projects, and processes or activities directly related to oil and gas exploration and production industry;
2. Enter into contracts or agreements to carry out the purposes of this Act, including authority to contract for the administration of the oil and gas research, development, marketing, and educational program;
3. Keep accurate records of all financial transactions performed under this Act;

4. Cooperate with any private, local, state, or national commission, organization, or agent, or group and to make contracts and agreements for programs benefiting the oil and gas industry;
5. Accept donations, grants, contributions, and gifts from any public or private source and deposit such in the oil and gas research fund; and
6. Make and explore orders, rules, and regulations necessary to effectuate the purposes of this Act.

Oil and gas research council.

1. The oil and gas research council is composed of seven 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 oil and gas association. The governor may reject the list and request the association 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. A county commissioner from an oil producing county appointed by the governor.
 - e. The director of the oil and gas division and the state geologist shall serve on the council as advisory nonvoting members.
2. Subject to subsection 7, 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 council shall select its chairman from among its 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 members constitute a quorum.
5. The council shall recommend to the 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 Act.
6. Each member of the council is entitled to receive reimbursement of expenses in performing official duties in amounts provided by law for other state offices.

7. Members of the council appointed by the governor 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 commission, to the extent that the council 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 council or receiving council services under this Act, 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 council or commission to have material designated as confidential under subsection 1. The request must contain any information required by the council 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 under subsection 2 is confidential. The council 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 determines the information is either not relevant or not a trade secret, the council 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 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.

SECTION 2. A new section to chapter 57-51.1 of the North Dakota Century Code is created and enacted as follows:

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 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 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 appropriated as a continuing appropriation to the council to be used for purposes stated in section 1 of this Act.

Approved May 2, 2003
Filed May 2, 2003

CHAPTER 473**HOUSE BILL NO. 1345**

(Representatives Carlson, Delmore, Maragos)
(Senators Dever, J. Lee, Wardner)

MODULAR HOME BUILDING CODE COMPLIANCE

AN ACT to create and enact a new subsection to section 54-21.3-03 of the North Dakota Century Code, relating to the state building code; and to amend and reenact section 54-21.3-07 of the North Dakota Century Code, relating to modular residential and commercial structures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 54-21.3-03 of the North Dakota Century Code is created and enacted as follows:

A modular residential structure or a prebuilt home placed in the state must be constructed in compliance with the state building code. A modular residential structure or a prebuilt home placed in a jurisdiction that has amended the state building code must be constructed in compliance with the state building code and the amendments adopted by that jurisdiction.

SECTION 2. AMENDMENT. Section 54-21.3-07 of the North Dakota Century Code is amended and reenacted as follows:

54-21.3-07. Modular residential and commercial structures - Third-party inspections - Rules. The manufacturer of a modular residential or commercial structure that is built in a factory ~~may~~ shall contract with a third party for the inspection of the structure for compliance with all applicable building, electrical, fire, and plumbing codes and standards during the manufacturing process in the factory. A third party that conducts inspections and certifies compliance with all applicable codes and standards must be approved as a certified third-party inspector by the division of community services. The department of commerce shall adopt rules for the certification of inspectors and for the procedures to be followed in conducting inspections of modular residential and commercial structures. ~~¶~~ When a manufacturer of modular residential or commercial structures contracts with a certified third-party inspector to monitor compliance with all applicable building, electrical, fire, and plumbing codes and standards for a modular residential or commercial structure, no further inspection by state or local building, electrical, fire, or plumbing inspectors may be required for that structure during the manufacturing process in the factory. This section does not apply to a factory manufacturing fewer than six residential or commercial structures per year.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 474**SENATE BILL NO. 2312**

(Senators Kringstad, Dever, Lyson)

(Representatives Dosch, Sitte)

MANUFACTURED HOME INSTALLATION PROGRAM

AN ACT to provide for a manufactured home installation program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Adoption of an installation program. The department of commerce shall adopt rules establishing a manufactured home installation program for all manufactured homes built in accordance with the manufactured homes construction and safety standards under 24 CFR 3280 adopted pursuant to the Manufactured Housing Construction and Safety Standards Act [42 U.S.C. 5401 et. seq.]. The rules must establish minimum installation standards. If required by federal law, the rules may include standards and requirements for licensing and training of installers, inspections of installations, dispute resolution, and penalties for noncompliance. The standards do not apply to manufactured homes installed before the original effective date of the rules. Unless otherwise required by federal law, the standards regarding foundations do not apply to a manufactured home to be installed in a mobile home park if the mobile home park was in existence before the original effective date of the rules and if the manufactured home is installed pursuant to the manufacturer's instructions. The rules must include provisions for the enforcement of these standards.

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 475**SENATE BILL NO. 2064**

(Industry, Business and Labor Committee)

(At the request of the Office of Management and Budget)

WIRELESS SERVICE FEE COLLECTION

AN ACT to amend and reenact section 54-23.2-09 of the North Dakota Century Code, relating to state radio communications collection of 911 service fees for wireless access lines; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-23.2-09 of the North Dakota Century Code is amended and reenacted as follows:

54-23.2-09. Mobile data terminal and 911 service fees. State radio communications shall establish and charge fees to provide mobile data terminal service to interested local law enforcement agencies. The fees must be based on actual costs incurred by state radio communications for providing the service.

State radio communications may provide 911 services to a political subdivision with a population of fewer than twenty thousand and shall charge at least twenty cents per telephone access line and wireless access line for 911 services provided to political subdivisions. The fee for 911 wireless services must be charged to and paid by the political subdivision receiving services from state radio communications under this section from and after the date of the agreement entered into by the political subdivision or its designee under section 57-40.6-05, whether the date of that agreement is before or after the effective date of this Act. Each county currently receiving 911 services from state radio communications shall abide by the standards established by law.

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

Approved April 4, 2003

Filed April 4, 2003

CHAPTER 476

HOUSE BILL NO. 1073

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

DOCR LAND SALES AND LEASES

AN ACT to amend and reenact subsection 12 of section 54-23.3-04 of the North Dakota Century Code, relating to authority of the director of the department of corrections and rehabilitation to lease and sell land.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 54-23.3-04 of the North Dakota Century Code is amended and reenacted as follows:

12. To ~~sell, lease, or exchange~~ land owned by the state under the jurisdiction of the department of corrections and rehabilitation. A lease by the director is not subject to the conditions of this subsection. The director may sell or exchange, with the governor's approval, selected portions of land owned by the state under the jurisdiction of the department of corrections and rehabilitation and ~~to~~ may sell, trade, lease, or grant mining easements to extract and remove any resources found on, in, or under said department of corrections and rehabilitation lands, including clay, coal, oil, gas, gravel, sand, dirt, and sod, under the following conditions and provisions:
 - a. Any such sale, exchange, or transaction must allow for the submission of bids pursuant to a notice published in at least one official county newspaper. The sale, exchange, or transaction is exempt from the provisions of sections 54-01-05.2 and 54-01-05.5.
 - b. Any such sale, exchange, or transaction may not be made for less than the appraised value, and the state reserves the right to reject any and all bids.
 - c. The commissioner of university and school lands or the commissioner's designee shall provide technical assistance and advice to the director of the department of corrections and rehabilitation in any transaction.
 - d. All legal documents, papers, and instruments required by any transaction must be reviewed and approved as to form and legality by the attorney general.
 - e. Any of these transactions can be entered into on any terms and conditions permitted by law and approved by the governor.

- f. All funds and proceeds realized from any of these transactions must be placed in an interest-bearing fund in the state treasury, designated as the North Dakota state penitentiary land fund to be used for the acquisition of additional land and facilities; to maintain, expand, or develop affiliated facilities; to relocate the Missouri River correctional center and the farming and ranching operations of the North Dakota state penitentiary; or for penitentiary renovation.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 477**SENATE BILL NO. 2274**

(Senators Brown, Grindberg)
(Representatives Carlson, Wrangham)

**ECONOMIC DEVELOPMENT AND FINANCE
DIRECTOR DUTIES**

AN ACT to amend and reenact sections 10-30.5-05 and 54-34.3-05 of the North Dakota Century Code, relating to the duties of the director of the department of commerce division of economic development and finance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-30.5-05 of the North Dakota Century Code is amended and reenacted as follows:

10-30.5-05. Management. The director of the ~~finance office of the~~ department of commerce division of economic development and finance ~~must be~~ shall appoint the chief executive officer of the corporation. The board of directors shall determine minimum qualifications of all other staff positions.

All investments, contracts, partnerships, limited liability companies, and business transactions of the corporation are the responsibility of the ~~deputy director~~ chief executive officer and the board of directors. The board may provide that normal operating costs anticipated in an approved budget may be incurred and paid without prior board approval.

SECTION 2. AMENDMENT. Section 54-34.3-05 of the North Dakota Century Code is amended and reenacted as follows:

54-34.3-05. Finance office - Deputy director. The director shall ~~appoint a~~ deputy director who shall administer the finance office. ~~The deputy director shall serve at the will of the director and receive a salary set by the director within the limits of legislative appropriations.~~ The purpose of the office is to identify and coordinate sources of capital and financial assistance, including lending programs of the Bank of North Dakota, and administer programs of financial assistance placed under the administration of the office, to business and industry, local governments, and other entities and individuals in the state consistent with the mission of the office. The finance office shall:

1. Administer other programs of financial assistance assigned to it by law or otherwise.
2. Perform such other duties as assigned to it by the director.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 478

HOUSE BILL NO. 1423

(Representatives Froseth, Haas, Severson)
(Senators Andrist, Grindberg, Klein)

RURAL GROWTH INCENTIVE PROGRAM

AN ACT to amend and reenact section 54-34.3-13 of the North Dakota Century Code, relating to rural growth incentive program grants and loans by the department of commerce; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-34.3-13 of the North Dakota Century Code is amended and reenacted as follows:

54-34.3-13. Rural growth incentive program.

1. The department shall manage and administer the rural growth incentive program. A city with a population of less than two thousand five hundred may apply to the department to be designated as a rural growth incentive city. A rural growth incentive city may be eligible for a loan, grant, or both under this section.
2. The department shall designate an applicant city as a rural growth incentive city eligible for a loan if the city raises funds in the amount of a dollar for dollar match for the amount requested in the loan, prepares an economic development strategic plan, and meets any additional program requirements provided by rule. The source of city funds used for loan matching funds may be any combination of public and private funds.
2. If the department designates a city as a rural growth incentive city:
 - a. ~~Subject~~ eligible for a loan under this section, subject to the availability of funds, the state shall make a loan to the city in an amount not less than twenty-five thousand dollars and not more than seventy-five thousand dollars. The department shall establish the amount of the interest rate for loans provided to a city under this ~~section~~ subsection. The funding source of the state loan is the North Dakota development fund. The city shall distribute the city and state funds to qualifying new or expanded primary sector businesses in the city. A qualifying business in the city includes a business that provides essential services to the city. For purposes of this ~~section~~ subsection, a business that provides essential services does not include a public utility. The governing body of the city determines whether a new or expanded primary sector business qualifies for funding, and the director of the department determines whether a business that provides essential services to the city qualifies for funding. The state shall distribute a loan to a rural growth incentive city once the city establishes the city has chosen a specified qualified business to receive funding.

3. The department shall designate an applicant city as a rural growth incentive city eligible for a grant if the city raises funds in the amount of a dollar-for-dollar match for the amount requested in the grant application and meets any additional program requirements provided by rule. The source of city funds used for grant matching funds may be any combination of public and private funds. If the department designates a city as a rural growth incentive city eligible for a grant under this section, subject to availability of funds, the state shall make a grant to the city in an amount not to exceed ten thousand dollars. The recipient rural growth incentive city shall use the grant money received to conduct a feasibility study for the location of a new business, including an expansion of a business with the primary place of business outside the rural growth incentive city. The business under this subsection is not limited to primary sector businesses. The funding source of the state grant is the North Dakota development fund. Total grants awarded by the department under this subsection may not exceed one hundred thousand dollars per biennium.
4. The city may not use city or state funds raised or provided under this section for costs associated with administering the rural growth incentive city.

 - b. The department shall provide the rural growth incentive city with training to assist the city in expanding primary sector businesses, locating new businesses, and working with state economic development programs.

SECTION 2. EXPIRATION DATE. This Act is effective through July 31, 2005, and after that date is ineffective.

Approved March 31, 2003
Filed March 31, 2003

CHAPTER 479**HOUSE BILL NO. 1230**

(Representatives Belter, Carlson)
(Senator Fischer)

**GARRISON DIVERSION OVERVIEW COMMITTEE
REPEALED**

AN ACT to amend and reenact section 54-35-02.7 of the North Dakota Century Code, relating to legislative overview of the Garrison diversion project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-02.7 of the North Dakota Century Code is amended and reenacted as follows:

54-35-02.7. Garrison diversion overview committee - Duties. The legislative council shall create a legislative council committee entitled the Garrison diversion overview committee. The committee shall consist of the majority and minority leaders and their assistants from the house and senate, the speaker of the house, the president pro tempore of the senate selected at the end of the immediately preceding legislative session, the chairmen of the house and senate standing committees on natural resources, and the chairmen of the house and senate standing committees on agriculture. If a member of the committee named in this section is unable to serve on the committee, the chairman of the legislative council may appoint another member of the legislative assembly to fill the vacancy. The committee is responsible for legislative overview of the Garrison diversion project and related matters; and for any necessary discussions with adjacent states on water-related topics. Staff services for the committee must be provided by the legislative council staff. The committee shall report to the legislative council in the same manner as do other interim legislative council committees.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 480

SENATE BILL NO. 2418

(Senators Cook, Freborg, Stenehjem)
(Representatives Berg, R. Kelsch, Monson)
(Approved by the Delayed Bills Committee)

NO CHILD LEFT BEHIND INVESTIGATING COMMITTEE

AN ACT to create a select committee regarding implementation of the No Child Left Behind Act of 2001; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. NO CHILD LEFT BEHIND ACT OF 2001 - SELECT COMMITTEE - APPOINTMENT - DUTIES.

1. The legislative council shall appoint a select committee consisting of five members of the senate and six members of the house of representatives for the purpose of investigating the adoption of the No Child Left Behind Act of 2001 [Pub. L. 107-110; 115 Stat. 1425; 20 U.S.C. 6301 et seq.], its rationale, the promulgation of any federal regulations implementing the No Child Left Behind Act of 2001, the direct and indirect impact of the Act and its regulations on the school districts of this state, and the financial impact of the Act and its regulations on the budget of this state and on the taxpayers of this state.
2. The legislative council shall designate the chairman and vice chairman of the committee.
3. The committee shall operate under the rules applicable to other legislative council committees, except the committee has the power to communicate directly with the United States secretary of education, employees of the United States department of education, and any other federal officials, both elected and appointed, regarding implementation of the No Child Left Behind Act of 2001.
4. When an agency files a notice of proposed rulemaking with the office of the legislative council under subsection 1 of section 28-32-10 on any matter governed by the No Child Left Behind Act of 2001, the agency shall provide a copy of the notice to the chairman of the committee. The chairman shall convene the committee within sixty days of receiving the notice, or as soon thereafter as practicable, for the purpose of receiving a presentation by the agency regarding the nature and scope of the proposed rules and for the purpose of receiving presentations by members of the public regarding the nature and scope of the proposed rules.
5. The committee shall report to the fifty-ninth legislative assembly if the committee determines the state is not in compliance with any requirement of the No Child Left Behind Act of 2001.

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

Approved April 24, 2003

Filed April 24, 2003

CHAPTER 481**HOUSE BILL NO. 1155**
(Representative Bellew)**SCHOOL DISTRICT RESIDENCE STUDY**

AN ACT to provide for a legislative council study of the criteria by which a student's school district of residence is established.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2003-04 interim, the criteria by which a student's school district of residence is established and whether that criteria correctly assigns both benefits and responsibilities to the appropriate school districts. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved March 13, 2003
Filed March 13, 2003

CHAPTER 482**HOUSE BILL NO. 1186**

(Representative Wieland)
(Senator Mathern)

COUNTY COURT FACILITY LEASING STUDY

AN ACT to provide for a legislative council study of the state leasing of county court facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. State leasing of county court facilities - Legislative council study. During the 2003-04 interim, the legislative council shall consider studying the leasing or renting of county court facilities by the state or other political subdivision, including the possibility of counties retaining a portion of fees collected by the counties in lieu of leasing or renting by the state or other political subdivision. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 483**HOUSE BILL NO. 1386**
(Representatives Schmidt, Froelich)**PUBLIC OFFICER BONDING STUDY**

AN ACT to provide for a legislative council study of bonds required by law.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY OF BONDS REQUIRED BY LAW. During the 2003-04 interim, the legislative council shall consider studying North Dakota Century Code provisions requiring public officers and other individuals and entities to provide bonds, whether the state bonding fund is an appropriate entity to provide those bonds, whether private entities within the state provide bonds for public officials and other individuals and entities required to be bonded, and whether the bonds required by statute are appropriate and necessary. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved March 19, 2003
Filed March 19, 2003

CHAPTER 484**HOUSE BILL NO. 1497**

(Representatives Carlson, Berg, Svedjan)
(Senators Holmberg, Stenehjem)

**GOVERNMENT PERFORMANCE AND
ACCOUNTABILITY COMMITTEE**

AN ACT to provide for a legislative council study of state government performance and accountability.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - GOVERNMENT PERFORMANCE AND ACCOUNTABILITY - APPOINTMENT - ACCEPTANCE OF FUNDS - EXPENDITURES. The legislative council shall consider studying, during the 2003-04 interim, state government performance and accountability practices. The legislative council shall appoint a ten-member government performance and accountability committee in the same manner as the council appoints other interim committees. The council shall appoint at least six legislators to the committee. The council may appoint two citizen members to the committee. The council may also include the governor, or the governor's designee, and an additional executive branch representative as members of the committee. The council shall designate the chairman of the committee. The committee shall operate in accordance with the statutes and procedures governing the operation of other legislative council interim committees. The committee may accept and use gifts, grants, or assistance to accomplish its purposes. The study, if conducted, must include a review of other state's performance budgeting practices and strategic planning efforts and how those practices and efforts may apply to North Dakota and improve North Dakota's budgeting process. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 485

HOUSE BILL NO. 1504

(Representatives Berg, Keiser, Svedjan)
(Senators Cook, Stenehjem, Wardner)
(Approved by the Delayed Bills Committee)

BUSINESS CLIMATE STUDY

AN ACT to provide for a legislative council study of the state's business climate; and to provide for an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - NORTH DAKOTA BUSINESS CLIMATE - REPORT. During the 2003-04 interim, the legislative council shall study the state's business climate, including the creation of an index of key objective measurement that address the state's competitiveness with other states; the consideration of methods of creating business partnerships with North Dakota Indian tribes in order to increase primary sector business growth in the state, with a focus on business opportunities that may be available to North Dakota Indian tribes through the United States small business administration 8(a) business development program; and active participation in the activities of the primary sector business congress. In conducting the study, the legislative council shall create a primary sector business congress. The congress must include representatives of primary sector business and may include representatives of local economic developers and the executive branch. The congress shall assist in the business climate study; evaluate the impact of existing state economic development programs on primary sector businesses; identify methods to increase primary sector business job growth in the state; and prioritize for the legislative council the state's primary sector business economic development programs and initiatives. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$25,000, or so much of the sum as may be necessary, to the legislative council for the biennium beginning July 1, 2003, and ending June 30, 2005, for the purpose of conducting the study as provided in section 1 of this Act.

Approved April 16, 2003

Filed April 17, 2003

CHAPTER 486**SENATE BILL NO. 2262**

(Senator Mutch)

MOTOR VEHICLE INSURANCE STUDY

AN ACT to provide for a legislative council study of motor vehicle and motorist insurance systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - MOTOR VEHICLE NO-FAULT, UNDERINSURED MOTORIST, AND UNINSURED MOTORIST INSURANCE. The legislative council shall study, during the 2003-04 interim, the motor vehicle no-fault, underinsured motorist, and uninsured motorist insurance systems. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved April 14, 2003
Filed April 9, 2003

CHAPTER 487**SENATE BILL NO. 2287**

(Senators Klein, Andrist, Fischer)

(Representatives Froelich, Weisz)

**ACCREDITED BUSINESS ACCOUNTANT LICENSURE
STUDY**

AN ACT to provide for a legislative council study of licensure of accredited business accountants.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. ACCREDITED BUSINESS ACCOUNTANT LICENSURE - LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2003-04 interim, the feasibility and desirability of providing for the licensure of accredited business accountants. If the study is selected by the legislative council, the legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved March 21, 2003

Filed March 21, 2003

CHAPTER 488**SENATE BILL NO. 2310**

(Senators Every, Erbele, Fairfield)
(Representatives Gulleason, Zaiser)

WIND ENERGY DEVELOPMENT STUDY

AN ACT to provide for a legislative council study of wind energy development.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL - WIND ENERGY DEVELOPMENT STUDY. The legislative council shall consider studying, during the 2003-04 interim, issues related to wind energy development in this state, including wind turbine siting requirements, wind energy development contract provisions, the potential economic benefits of wind energy development for farmers and ranchers, the potential adverse impacts of wind energy development on landowners, and the impact of wind energy development on organized labor, especially in the energy industry. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved April 4, 2003

Filed April 4, 2003

CHAPTER 489**SENATE BILL NO. 2379**

(Senator Nething)
(Representative Wald)

ASSUMPTION OF RISK STUDY

AN ACT to provide for a legislative council study of the doctrine of assumption of risk.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. ASSUMPTION OF RISK - LEGISLATIVE COUNCIL STUDY.

The legislative council shall consider studying, during the 2003-04 interim, the doctrine of assumption of risk and the impact the reenactment of the doctrine would have on other state laws. The legislative council shall report its findings and recommendations, together with any legislation required to implement the legislation, to the fifty-ninth legislative assembly.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 490**SENATE BILL NO. 2075**

(Industry, Business and Labor Committee)

(At the request of the Office of Management and Budget)

SURPLUS PROPERTY SALE PROCEEDS

AN ACT to amend and reenact subsection 5 of section 54-44-04.6 of the North Dakota Century Code, relating to the distribution of proceeds from the sale of surplus property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 54-44-04.6 of the North Dakota Century Code is amended and reenacted as follows:

5. All proceeds received from the transfer or sale of surplus property must be deposited with the state treasurer for deposit in the surplus property operating fund. For each piece of property sold for less than three thousand dollars, all proceeds must be retained in the surplus property operating fund unless the office of management and budget determines the sale proceeds are subject to special requirements for distribution. For each piece of property sold for three thousand dollars or more, the office of management and budget shall transfer to the agency from which the property was received an amount equal to the proceeds of the sale less the administrative expenses of the sale. The agency shall deposit the proceeds into the fund from which the property was originally purchased. At the end of each biennium, the office of management and budget shall transfer all funds in the surplus property operating fund that exceed the amount needed for operating the surplus property function for one year to the general fund.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 491

HOUSE BILL NO. 1441

(Representatives Monson, R. Kelsch, Maragos, Nicholas)
(Senators Nichols, Wardner)

OIL PUT OPTIONS

AN ACT to authorize the state to purchase oil put options; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Oil and gas tax revenue put options. Upon request of the director of the office of management and budget and upon approval by the industrial commission, the state investment board may purchase oil put options for the office of management and budget. The purchase of put options must be designed to offset reduced state general fund oil and gas tax revenues due to oil and gas prices falling below selected levels. Put options may be purchased only at such times that the purchase assures that oil tax revenues plus the revenues from the sale of put options will be in excess of the oil tax revenues estimated for that level of production by the most recently adjourned legislative assembly. The office of management and budget shall report any purchases of put options to the budget section of the legislative council.

SECTION 2. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, for the biennium beginning July 1, 2003, and ending June 30, 2005, such amounts as may be necessary, but not to exceed the additional general fund revenues that will become available pursuant to the sale of oil put options as provided in this Act, to the office of management and budget to purchase oil put options through the state investment board.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 2005, and after that date is ineffective.

Approved March 13, 2003
Filed March 13, 2003

CHAPTER 492**HOUSE BILL NO. 1076**

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

BUDGET LEGISLATION SUBMISSION DEADLINE

AN ACT to amend and reenact section 54-44.1-07 of the North Dakota Century Code, relating to the date by which appropriation and budget-related legislation must be submitted to the legislative council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.1-07 of the North Dakota Century Code is amended and reenacted as follows:

54-44.1-07. Presentation of budget data - How presented to the legislative assembly. The director of the budget or the director's ~~designated subordinate designee~~ shall present the budget data information in section 54-44.1-06, ~~including the budget and revenue proposals recommended by the governor~~ except the drafts of acts required by subsection 7 of that section, and make available sufficient copies thereof to the legislative assembly at the organizational session. The drafts of acts required by subsection 7 of section 54-44.1-06 must be submitted to the legislative council within seven days after the day of adjournment of the organizational session. The budget data must be completed and made available to the legislative assembly in such form as may be prescribed by the legislative council. The legislative council shall set the time and place at which such budget data is to be presented.

Approved March 17, 2003

Filed March 17, 2003

CHAPTER 493

SENATE BILL NO. 2092

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

HUMAN RESOURCE MANAGEMENT SERVICES

AN ACT to amend and reenact subdivision a of subsection 2 of section 28-32-01, section 50-06.1-16, subsection 1 of section 52-02-06, sections 54-06-25, 54-23.3-05, 54-23.3-06, 54-44.3-01, 54-44.3-02, 54-44.3-11, and 54-44.3-30, subsection 3 of section 54-52.6-01, and subsection 5 of section 54-57-01 of the North Dakota Century Code, relating to changing the name of the central personnel division to North Dakota human resource management services and revising references to the central personnel system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁵ **SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

- a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the ~~central personnel system~~ classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.

SECTION 2. AMENDMENT. Section 50-06.1-16 of the North Dakota Century Code is amended and reenacted as follows:

50-06.1-16. Committee on employment of people with disabilities - Appointment - Expenses - Director - Duties. There is established a committee on employment of people with disabilities. The committee consists of three members. The governor shall appoint each member for a term of three years, staggered so that the term of one member expires July first of each year. A vacancy occurring other than by reason of the expiration of a term must be filled in the same manner as original appointments, except that the appointment may be made for only the remainder of the unexpired term. The members are entitled to be paid for mileage and actual expenses incurred in attending meetings and in performance of their official duties in amounts provided by law for other state officers and employees. The committee, with the approval of the governor, shall appoint a full-time director to serve at the pleasure of the governor. For administrative purposes, the director is an unclassified employee of the department and is not included in the ~~central personnel system~~ classified service. The committee shall coordinate activities and serve as a clearinghouse for information relating to the employment of people with disabilities. The committee shall prepare for and perform followup duties in connection with state,

²¹⁵ Section 28-32-01 was also amended by section 3 of Senate Bill No. 2151, chapter 469, and section 5 of Senate Bill No. 2288, chapter 174.

regional, and national conferences, encourage interest, participation, and cooperation with state departments, agencies, and other organizations in developing needed services, facilities, and opportunities, and provide consultant help to local organizations created for the purpose of coordinating activities for the employment of people with disabilities.

SECTION 3. AMENDMENT. Subsection 1 of section 52-02-06 of the North Dakota Century Code is amended and reenacted as follows:

1. In accordance with chapter 54-44.3 and rules adopted thereunder and on the basis of the authority granted under section 52-02-02, the bureau shall select and prescribe the duties and powers of officers, employees, and other persons as may be necessary in the performance of its duties under the chapter; provided, that in cooperation with ~~the central personnel division~~ North Dakota human resource management services the bureau shall take such action as may be necessary to meet the personnel standards adopted by the secretary of labor pursuant to the Social Security Act [42 U.S.C. 301 et seq.] and the Wagner-Peyser Act [48 Stat. 113; 29 U.S.C. 49-49k], both as amended.

²¹⁶ **SECTION 4. AMENDMENT.** Section 54-06-25 of the North Dakota Century Code is amended and reenacted as follows:

54-06-25. State employees compensation commission - Appointment of members.

1. The state employees compensation commission shall make recommendations on appropriate levels of state employee compensation and fringe benefits. The commission may not consider conditions of employment other than salary and fringe benefit issues. The ~~central personnel~~ division shall provide staff services for the commission.
2. The governor or the governor's designee is a member of the commission and serves as chairman. Four members of the legislative assembly appointed by the chairman of the legislative council are members of the commission. Four state employees are members of the commission, three of whom must be members of the classified service of the state and one of whom must be a member of the nonclassified service of the state. The ~~central personnel~~ division shall conduct the election for the employee representatives. All elected commission members serve for a term of four years and may be reelected for additional terms of office. All appointed commission members serve for a term of two years and may be reappointed for additional terms of office. The state employee members' terms begin on October first of the year they are elected. The terms of office of members who are members of the legislative assembly and the governor's designee begin on October first of each odd-numbered year. Before the conclusion of each term, an election must be held to replace the two members whose terms will end in that year. The terms of those commission members

²¹⁶ Section 54-06-25 was also amended by section 1 of Senate Bill No. 2108, chapter 461.

elected on July 1, 1996, expire on September 30, 1999. No more than one employee from the same institution of higher education or agency may serve on the commission at the same time. If two or more employees from the same institution of higher education or agency appear on the ballot at the same time, the employee with the highest vote total is elected to the position. If a member of the commission moves to another agency where another current member of the commission is employed, then the moving member must resign. Vacancies on the commission must be filled by the person who received the next highest vote total in the previous election.

3. The commission shall meet at the call of the chairman as often as may be necessary, but at least once during each year of the biennium. The commission shall consider proper levels of compensation and fringe benefits for state employees and make its recommendations on these issues to the governor in time for consideration in preparation of the executive budget to be submitted to the next legislative assembly. The commission shall also submit its recommendations to the legislative council at the biennial meeting at which the legislative council receives the reports of its interim committees.
4. The members of the legislative assembly who are commission members are entitled to receive compensation from the legislative council for each day in attendance at commission meetings in the same manner as provided for members of the legislative council and reimbursement from the legislative council for travel and other necessary expenses incurred in performing commission duties in the amounts provided for state employees under section 54-06-09. The state employee members of the commission are entitled to receive reimbursement for necessary expenses incurred in attending commission meetings at the rates provided for state employees under section 54-06-09 and may not be assessed any annual leave or loss of salary for attendance at meetings of the commission. The employing agency of state employee members shall pay their expenses.
5. Each member of the classified service may be a candidate for election to the state employees compensation commission. A member of the nonclassified service may be a candidate for election to the commission if the employee occupies a regularly funded and approved position. In order to vote for a candidate in the election to fill a vacancy on the commission, an employee must be a member of the classified service or must occupy a regularly funded and approved position. Student and temporary employees, elected state officials, and appointees of the governor are not eligible to serve on the commission, participate as a candidate for election to the commission, or vote for members of the commission. If after election to the commission, an employee moves from one type of service to another, that employee may continue serving on the commission until the regular expiration of that employee's term.
6. The ~~central personnel~~ division shall ensure that a notice of an opening on the commission and the election is provided to an officer at each agency and institution. The officer at each agency and institution shall post the notice in a conspicuous place. The notice must include a statement of voter and candidate eligibility, the candidate nomination requirements, the date of the election, and where to obtain the nomination petitions for filing.

7. In order to be placed on the commission ballot, an employee shall contact the ~~central personnel~~ division for a petition form. The petition form must be returned to the ~~central personnel~~ division no more than twenty calendar days after the publishing date of the notice by the ~~central personnel~~ division with at least one hundred signatures of eligible state employees. Petition forms that are not complete, or are returned after the required date, must be declared void.
8. The ballot must be prepared by the ~~central personnel~~ division and distributed to each agency and institution payroll officer. An officer of each agency and institution shall provide mailing labels for all qualified employees to the ~~central personnel~~ division upon the division's request. A ballot for the election must be distributed with each employee's payroll check on the employee's regularly scheduled payday.
9. Employees of the ~~central personnel~~ division shall count the ballots following the final day that the ballots must be returned. Each candidate may have one overseer present at the ballot counting who may examine each ballot as to its sufficiency after the ballot has been counted. A candidate may act as that candidate's overseer. If a candidate wishes to designate a representative to act as that candidate's overseer, the candidate must provide a notarized authorization to the election committee at the counting of ballots. An overseer may act on behalf of more than one candidate; however, the overseer must show required authorization from each candidate represented. The overseer may question the decision of the ballot counters regarding a ballot immediately after the counting of the ballot. If questioned, the comments of the overseer must be heard. The ~~central personnel~~ division or the division's representative shall decide if the complaint is valid and whether the ballot will be accepted. The decision of the ~~central personnel~~ division or the division's representative is final and must be given in writing. Once all ballots have been counted and all questions raised by the overseers have been decided by the ~~central personnel~~ division or the division's representative, the election is closed and results must be declared final. The ~~central personnel~~ division shall notify all candidates of the election results within ten working days of the election.
10. As used in this section, "division" means North Dakota human resource management services.

SECTION 5. AMENDMENT. Section 54-23.3-05 of the North Dakota Century Code is amended and reenacted as follows:

54-23.3-05. Appointment and removal of officers. The director of the department of corrections and rehabilitation with the approval of the governor may appoint a director of the division of juvenile services, a director of the division of adult services, and other division directors and personnel as deemed necessary for the effective and efficient operation of the department. The director of the division of juvenile services, the director of the division of adult services, and other division directors who may be appointed shall meet qualifications as established for the classified ~~positions under the central personnel classification system~~ service. The division directors may be removed by the director of the department, with the approval of the governor, for misconduct, neglect of duty, incompetency, or other cause showing an inability or refusal to properly perform the duties of their office. All other officers and employees of each division must be appointed and removed by the

director of the division, subject to the approval of the director of the department of corrections and rehabilitation. All officers and employees of the department of corrections and rehabilitation are subject to the provisions of the state personnel policies.

SECTION 6. AMENDMENT. Section 54-23.3-06 of the North Dakota Century Code is amended and reenacted as follows:

54-23.3-06. Salaries of division directors and other officers. The director of the department of corrections and rehabilitation shall determine the salary of each division director within the limits of legislative appropriations and within the salary range of the classified position as established by ~~the central personnel division~~ North Dakota human resource management services for the position. All other officers and employees shall receive salaries determined by their division director and approved by the director of the department.

SECTION 7. AMENDMENT. Section 54-44.3-01 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-01. Purpose of chapter. The general purpose of this chapter is to create ~~the division of central personnel~~ North Dakota human resource management services in order to establish a unified system of ~~personnel administration~~ human resource management for the classified service of the state based upon merit principles and scientific methods, governing the position classification, pay administration, and transfer of its employees. All appointments and promotions to positions in the state classified service must be made without regard to sex, race, color, national origin, age, religious affiliations, or political opinions on the basis of merit and fitness.

SECTION 8. AMENDMENT. Section 54-44.3-02 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-02. Definitions. As used in this chapter, unless the context clearly requires otherwise:

1. "Appointing authority" means the authority to appoint to positions in the classified service and is reserved to officials and heads of departments and agencies within the government.
2. "Board" means the state personnel board.
3. "Director" means the director of ~~the central personnel division~~ North Dakota human resource management services.
4. "Division" means ~~the central personnel division~~ North Dakota human resource management services.
5. "Employee" means any person who occupies a position in the classified service.
6. "Officer" means an employee of the state government who is appointed and serves at the pleasure of an official, board, or commission.
7. "Official" means a member of the state government elected by popular vote.

SECTION 9. AMENDMENT. Section 54-44.3-11 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-11. ~~Central personnel division~~ North Dakota human resource management services - Director - Appointment - Removal. ~~There~~ North Dakota human resource management services is created a ~~central personnel division~~ within the office of management and budget under the supervision and control of a director who is responsible for the performance and exercise of the duties, functions, and powers imposed upon the division.

1. The director must be experienced in the field of ~~personnel administration~~ human resource management and shall hold considerable knowledge of merit principles, goals, and their methods of operation.
2. The director of the office of management and budget shall appoint the director. The position of director is not a classified position and the director shall serve at the pleasure of the director of the office of management and budget.

SECTION 10. AMENDMENT. Section 54-44.3-30 of the North Dakota Century Code is amended and reenacted as follows:

54-44.3-30. Agencies subject to merit system. All personnel employed by the department of human services, the regional offices of that department, job service North Dakota, ~~the central personnel division~~ North Dakota human resource management services, the state department of health, and other agencies or political subdivisions as may by federal law or rule be required to be subject to a merit system in order to obtain federal grants-in-aid are covered by the merit system provided in this chapter. Merit system coverage must also be provided to personnel employed as purchasing agents or buyers in the purchasing division of the office of management and budget. Other agencies, departments, or divisions and positions must be placed under a merit system in the manner and to the extent required by law.

SECTION 11. AMENDMENT. Subsection 3 of section 54-52.6-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Eligible employee" means a permanent state employee, except an employee of the judicial branch or an employee of the board of higher education and state institutions under the jurisdiction of the board, who is eighteen years or more of age and who is in a position not classified by ~~the central personnel division~~ North Dakota human resource management services.

SECTION 12. AMENDMENT. Subsection 5 of section 54-57-01 of the North Dakota Century Code is amended and reenacted as follows:

5. The director of administrative hearings shall develop categories of positions in the classified service under class titles for the appointment or employment of administrative law judges and support staff in consultation with and approved by the director of ~~the central personnel division~~ North Dakota human resource management services, including the salary to be paid for each position or category of position.

Approved March 7, 2003
Filed March 7, 2003

CHAPTER 494**SENATE BILL NO. 2107**

(Judiciary Committee)

(At the request of the Office of Management and Budget)

**CENTRAL PERSONNEL MEDIATION RECORD
CONFIDENTIALITY**

AN ACT to create and enact a new section to chapter 54-44.3 of the North Dakota Century Code, relating to confidentiality of central personnel division mediation service records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-44.3 of the North Dakota Century Code is created and enacted as follows:

Mediation - Open records exemption - Retaliation prohibition. Records of the division relating to mediation services provided by the division are exempt from section 44-04-18. An employee may not be discharged, disciplined, or penalized concerning the employee's compensation, conditions, location, or other privileges of employment because of the employee's request for or participation in the mediation services provided by the division.

Approved March 21, 2003

Filed March 21, 2003

CHAPTER 495

HOUSE BILL NO. 1180

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

STATE PURCHASING AND BIDDING

AN ACT to create and enact four new sections to chapter 54-44.4 of the North Dakota Century Code, relating to procurement of services, competitive sealed bid proposals, small purchases, and protested solicitations and awards; to amend and reenact sections 44-08-05.1, 54-44.4-01, 54-44.4-02, and 54-44.4-04, subsections 1 and 2 of section 54-44.4-05, section 54-44.4-06, and subsections 1, 2, and 4 of section 54-44.4-09 of the North Dakota Century Code, relating to purchasing policy, purchasing by the office of management and budget, solicitation criteria, exempt records, limited competitive and noncompetitive purchases, multistep sealed bids, and vendor registration; to require the director of the office of management and budget to study the state procurement process; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁷ **SECTION 1. AMENDMENT.** Section 44-08-05.1 of the North Dakota Century Code is amended and reenacted as follows:

44-08-05.1. Vouchers - Requirements for approval - Penalty - Action for violations. Any public officer or employee who has the power to approve a voucher for a department, agency, or institution for travel expenses or any other state expenditure of public funds shall determine before approving ~~such~~ the voucher ~~the~~ following:

1. That the expenditure for travel or other expenditures were for lawful and official purposes.
2. If for travel expense, 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. If the voucher is for expenditure other than travel expense, that the expenditure is lawful and that the voucher contains no false claims.

For purchases made with the use of a purchasing card authorized under ~~subsection 8 of section 54-44.4-02~~ section 11 of this Act, an employee of the office of management and budget designated by the director of the office of management and budget, on behalf of all agencies, may review and approve vouchers under this section and make payments pursuant thereto. Any public officer or employee who willfully approves a voucher with knowledge it contains false or unlawful claims or

²¹⁷ Section 44-08-05.1 was also amended by section 3 of Senate Bill No. 2078, chapter 388.

that it does not otherwise meet the requirements of this section for approval is guilty of theft and punishable under ~~the provisions of~~ chapter 12.1-23. Any public officer or employee who, without the use of ordinary care and diligence, negligently approves a voucher 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, or any other person who has knowledge of an actual or possible violation of this section shall make such information known to the attorney general. The attorney general shall investigate any alleged ~~violations~~ violation and, if a violation appears to exist, shall ~~criminally~~ prosecute under chapter 12.1-23 or bring a civil suit for the recovery of such funds as may actually have been improperly paid against the payee and officer or employee who approved such voucher in violation of ~~any of~~ the above requirements or shall bring both such criminal action and civil suit. The officer or employee who approves any voucher negligently has the right of subrogation against the payee of such voucher in the event public funds have been improperly paid to the payee.

SECTION 2. AMENDMENT. Section 54-44.4-01 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-01. Declaration of policy - Definitions. It is ~~hereby declared to be~~ state policy to provide comprehensive purchasing services based upon sound procurement practices and principles wherein, through full competition with fair and equal opportunity to all qualified persons ~~and firms~~ to sell to the state, each state agency and institution shall obtain its necessary ~~supplies commodities and equipment~~ services at competitive cost, consistent with quality, time, and performance requirements, except as otherwise provided by law. As used in this chapter, unless the context requires otherwise:

1. "Commodities" means all property, including equipment, supplies, materials, printing, insurance, and leases of equipment.
2. "Procurement officer" means an individual duly authorized to enter and administer purchasing contracts and make written determinations with respect thereto and also includes an authorized representative acting within the limits of authority.
3. "Professional services" means those services requiring special knowledge, education, or skills when the qualifications and experience of the individual rendering the services are of primary importance and the individual is required to exercise professional judgment. Professional services providers include appraisers, attorneys, accountants, psychologists, physicians, dentists, planners, analysts, and consultants. The term includes human services under which a person provides direct health or social welfare services to the citizens on behalf of the state. The term does not include services defined in section 54-44.7-01.
4. "Purchasing agency" means a governmental entity in the executive branch of government other than the office of management and budget which is authorized by this chapter, rules adopted under this chapter, written policy of the office of management and budget, or by way of delegation from the office of management and budget to enter purchasing contracts for commodities and services.

5. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. The term does not include professional services.

SECTION 3. AMENDMENT. Section 54-44.4-01 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-01. Declaration of policy - Definitions. ~~It is hereby declared to be~~ state policy to provide comprehensive purchasing services based upon sound procurement practices and principles wherein, through full competition with fair and equal opportunity to all qualified persons ~~and firms~~ to sell to the state, each state agency and institution shall obtain its necessary ~~supplies~~ commodities and ~~equipment~~ services at competitive cost, consistent with quality, time, and performance requirements, except as otherwise provided by law. As used in this chapter, unless the context requires otherwise:

1. "Commodities" means all property, including equipment, supplies, materials, printing, insurance, and leases of equipment.
2. "Procurement officer" means an individual duly authorized to enter and administer purchasing contracts and make written determinations with respect thereto and also includes an authorized representative acting within the limits of authority.
3. "Professional services" means those services requiring special knowledge, education, or skills when the qualifications and experience of the individual rendering the services are of primary importance and the individual is required to exercise professional judgment. Professional services providers include appraisers, attorneys, accountants, psychologists, physicians, dentists, planners, analysts, and consultants. The term includes human services under which a person provides direct health or social welfare services to the citizens on behalf of the state. The term does not include services defined in section 54-44.7-01.
4. "Purchasing agency" means a governmental entity in the executive branch of government other than the office of management and budget which is authorized by this chapter, rules adopted under this chapter, written policy of the office of management and budget, or by way of delegation from the office of management and budget to enter purchasing contracts for commodities and services.
5. "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance. The term includes professional services.

SECTION 4. 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; ~~except the~~. 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.~~ 7. Professional services, unless the office of management and budget agrees to procure professional services in response to an agency's written request.
- ~~7.~~ 8. 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.
- ~~8.~~ 9. 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 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.
- ~~9.~~ 10. Such specific items or items
- ~~10.~~ 11. Commodities and services costing less than a specified amount as determined and indicated by written directive by the director of the office of management and budget. The director may organize and administer, including by contract with a provider, a system of procurement for items agencies are authorized to purchase under this subsection which includes use of a procurement card. If the director establishes and administers a purchasing card system, the director may designate which agencies are required to use it for purchasing of items designated under this subsection costing less than a specified amount designated in writing by the director.
12. Specified commodities and services as determined by written directive by the director of the office of management and budget.
13. 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. The office of management and budget shall purchase ~~items~~ commodities or services as requested by agencies and institutions under the jurisdiction of the state board of higher education and the legislative and judicial branches of state government. The agencies and institutions under the jurisdiction of the state board of higher education, with the office of management and budget, shall make such joint purchases of like ~~items~~ commodities or services of high common usage as determined jointly by the agencies and institutions under the jurisdiction of the state board of higher education and the office of management and budget as will result in less cost to the state. The office of management and budget, pursuant to terms and conditions imposed by it, may agree with political subdivisions that have organized a purchasing group pursuant to a joint powers agreement under chapter 54-40.3 to cooperatively purchase certain specific ~~items~~ commodities or services designated by the office of management and budget if the cooperative purchase will result in a benefit to the state and to the political subdivisions participating in the joint powers agreement.

SECTION 5. 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; ~~except the~~. 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. ~~Professional services, unless the office of management and budget agrees to procure professional services in response to an agency's written request~~ 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 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. ~~Such specific items or items~~ Commodities and services costing less than a specified amount as ~~determined and indicated~~ by written directive by the director of the office of management and budget. ~~The director may organize and administer, including by contract with a provider, a system of procurement for items agencies are authorized to purchase under this subsection which includes use of a procurement card. If the director establishes and administers a purchasing card system, the director may designate which agencies are required to use it for purchasing of items designated under this subsection costing less than a specified amount designated in writing by the director.~~
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. The office of management and budget shall purchase ~~items~~ commodities or services as requested by agencies and institutions under the jurisdiction of the state board of higher education and the legislative and judicial branches of state government. The agencies and institutions under the jurisdiction of the state board of higher education, with the office of management and budget, shall make such joint purchases of like ~~items~~ commodities or services of high common usage as determined jointly by the agencies and institutions under the jurisdiction of the state board of higher education and the office of management and budget as will result in less cost to the state. The office of management and budget, pursuant to terms and conditions imposed by it, may agree with political subdivisions that have organized a purchasing group pursuant to a joint powers agreement under chapter 54-40.3 to cooperatively purchase certain specific ~~items~~ commodities or services designated by the office of management and budget if the cooperative purchase will result in a benefit to the state and to the political subdivisions participating in the joint powers agreement.

SECTION 6. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

Procurement of services. All services purchased by the office of management and budget or by an agency or institution in the executive branch of state government must comply with the standards and guidelines for procurement of services established by the office of management and budget. Before March first of each year, each agency or institution in the executive branch of state government which purchases services shall file with the office of management and budget a report regarding the services purchased the preceding year. The report must be provided on forms established and made available by the office of management and budget.

SECTION 7. AMENDMENT. Section 54-44.4-04 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-04. Office of management and budget - Rules. The office of management and budget shall adopt, ~~pursuant to~~ in accordance with the procedures provided by chapter 28-32, rules necessary to administer this chapter. The written directives issued by the director exercising authority provided in ~~subsection 8 of section~~ sections 54-44.4-02 and section 54-44.4-03 need not be adopted as rules under in accordance with chapter 28-32.

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 54-44.4-05 of the North Dakota Century Code are amended and reenacted as follows:

1. Except as otherwise provided in sections 44-08-01 and 25-16.2-02, and in this ~~section~~ chapter, purchasing contracts must be awarded through a competitive bidding process to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability, unless it is determined to be advantageous to the state to select a contractor through a competitive proposal process using other or additional criteria. The ~~office of management and budget procurement officer~~ may reject any or all bids or negotiate for a lower price with a successful bidder. Each bid received, with the name of the bidder, must be recorded. The office of management and budget may enter into term contracts for the acquisition of commodities or services and may make multiple awards for term commodity or service contracts when it deems a multiple award to be in the best interests of the state. ~~Until the date and time set for receiving and opening bids and proposals pursuant to a request for bids or proposals, all~~ All bids and proposals received under this chapter pursuant to a competitive sealed bid are exempt records under subsection 5 of section 44-04-17.1 until the date and time the bids are opened.
2. The office of management and budget shall adopt rules specifying the circumstances under which competition may be waived or limited, when negotiation may be used, and specifying the required justifications and procedures for using those methods of purchasing. The circumstances that may permit limited competitive, noncompetitive, or negotiated purchases include:
 - a. The commodity or service is available from only one ~~supplier~~ source.
 - b. The commodity or service is available from another governmental entity's contract.
 - c. The commodity or service is to be purchased for experimentation or trial.
 - d. ~~Competitive bidding has failed to produce a bidder~~ No acceptable bid or proposal was received pursuant to a competitive bidding or competitive proposal process.
 - e. Commodities are being purchased for over-the-counter resale.
 - f. Acceptable ~~goods~~ commodities or services are produced or provided by correctional institutions or other government agencies.

- g. The anticipated cost of purchasing specified ~~goods~~ commodities or services is less than an amount determined by the office of management and budget which would justify the expense of a competitive bidding or competitive proposal process.
- h. A used commodity is advantageous to the state and the commodity is available only on short notice.
- i. The commodity is a component or replacement part for which there is no commercially available substitute and which can be obtained only from the manufacturer.
- j. Compatibility with equipment currently owned by the state is essential to the proper functioning of that equipment.
- k. The agency provides documentation indicating that the services or the circumstances are of such a nature that deviation from the procurement procedure is appropriate.

SECTION 9. AMENDMENT. Section 54-44.4-06 of the North Dakota Century Code is amended and reenacted as follows:

54-44.4-06. All purchases to be made in accordance with specifications - Multistep sealed bids.

1. For purposes of this chapter, specification means a description of all required physical, design, performance, functional, and other characteristics of ~~an item~~ a commodity or service the purchaser requires and, consequently, what a bidder must offer. ~~All purchases made by the office of management and budget, institutions of higher education, or any state agency or institution to which authority to purchase has been delegated, must be made in accordance with written policies of the office of management and budget and the agencies and institutions under the jurisdiction of the state board of higher education.~~ The office of management and budget and institutions of higher education shall develop similar specifications for purchases of ~~items~~ commodities and services of high common usage. State agencies and institutions shall provide such assistance as may be requested by the office of management and budget and the institutions of higher education in the development of specifications. The office of management and budget and the institutions of higher education shall implement such procedures as are necessary for the inspection, testing, and acceptance of ~~supplies and equipment~~ commodities or services to determine that ~~goods~~ those received are in conformity with contract specifications.
2. When it is determined to be impractical to initially prepare a purchase description to support an award based on price, a solicitation may be issued requesting the submission of unpriced offers to be followed by a competitive bidding or competitive proposal process limited to those bidders or offerors found to be qualified under the criteria set forth in the first solicitation.

SECTION 10. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

Competitive sealed proposals - Exempt records.

1. A contract for commodities or services may be entered by competitive sealed proposals when a determination is made that the use of competitive sealed bidding is either not practicable or not advantageous to the state. The request for proposal must state the relative importance of price and other factors and subfactors, if any.
2. Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. All proposals received pursuant to a competitive sealed proposal process are exempt records under subsection 5 of section 44-04-17.1 until an award is made.
3. Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and before award for the purpose of obtaining best and final offers. In conducting discussions, there may be no disclosure of any information derived from proposals submitted by competing offerors.
4. Unless all proposals are rejected, award must be made to the responsible offeror whose proposal conforms to the solicitation and is determined, in writing, to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria may be used in the evaluation. The contract file must contain the basis on which the award is made. Written notice of the award of the contract to the successful offeror must be promptly given to all offerors.

SECTION 11. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

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.

SECTION 12. A new section to chapter 54-44.4 of the North Dakota Century Code is created and enacted as follows:

Resolution of protested solicitations and awards.

1. An interested party may protest the award of a contract, the notice of intent to award a contract, or a solicitation for commodities or services by the office of management and budget or purchasing agency under this chapter. The protest must be submitted in writing to the procurement officer responsible for the contract or solicitation within seven calendar days after the protestor knows or should have known of the facts giving rise to the protest.
2. If a contract has been awarded, the procurement officer immediately shall give notice of a protest to the contractor. In the case of pending award, a stay of award may be requested. A stay must be granted unless a written determination is made that the award of the contract without delay is necessary to protect the interests of the state.
3. If the protest is not resolved by mutual agreement, the procurement officer promptly shall send by certified mail to the protestor a written decision containing the basis for the decision and inform the protestor of the protestor's right to appeal.
4. The protestor may file an appeal of the decision rendered by the procurement officer with the director of the office of management and budget or designee. An appeal must be filed in writing within seven calendar days after the protestor receives the decision rendered by the procurement officer of the office of management and budget or the purchasing agency. The appeal must include a copy of the decision being appealed and the basis for the appeal. Within seven calendar days the director of the office of management and budget or the director's designee shall send by certified mail written notice of the decision to the protestor.

SECTION 13. AMENDMENT. Subsections 1, 2, and 4 of section 54-44.4-09 of the North Dakota Century Code are amended and reenacted as follows:

1. The office of management and budget shall establish and maintain current lists of persons that desire to provide commodities or services to the state. Every person ~~or business entity~~ that desires to bid or submit a proposal on contracts for commodities or services awarded under this chapter must be an approved vendor in order to ~~receive a request for bids or proposals.~~ Unless waived by the director of the office of management and budget, or the director's designee, a bid or proposal may not be considered under this section from any vendor that is not approved be placed on the bidders list. The office of management and budget or the purchasing agency shall use the list when issuing invitation for bids or request for proposals over the amount established for small purchases, except as otherwise provided in this section.

2. To become an approved vendor a person ~~or business entity~~ shall file an application with the office of management and budget. The application must contain information requested by the office of management and budget, including business and persons' names, telephone numbers, addresses, federal tax identification numbers, type of business organization, ~~other permits or licenses issued by this state and related numbers, the nature of the business and the products sold,~~ the types of ~~bids or proposals in~~ commodities or services for which the applicant is interested; ~~references in receiving solicitations,~~ and other business information the office of management and budget determines relevant. The application must also contain a statement appointing the secretary of state as the applicant's agent for service of process pursuant to subsection 3. The application must be signed and certified by an owner, partner, or company officer authorized by company bylaws or other organizational document to bind the company. The signature requirement may include the use of an electronic signature as defined in section 9-16-01 when authorized under section 9-16-17. The office of management and budget may require proof of the signing person's authority by certified copy of appropriate company documents.

4. ~~The director of the office of management and budget, or the director's designee, procurement officer~~ may waive the requirements for registration with the secretary of state as provided in this section and authorize receipt of a bid or proposal from a vendor that ~~unqualifiedly refuses to register as provided in this section if the director or the director's designee is not on the list of approved vendors if the procurement officer~~ makes a written determination that:
 - a. ~~A commodity is so unique and possesses such specific characteristics essential to the government program in question that it is available only from one source and not through wholesalers or retailers;~~

 - b. ~~An emergency as defined in subsection 7 of section 54-44.4-02 exists; or~~

 - c. ~~The commodity to be purchased is a one-time purchase for which at least two approved vendors are not available and the director of the office of management and budget, or the director's designee, determines consideration of bids or proposals from unregistered vendors is in the best interest of the state~~ it is in the best interest of the state to receive the bid or proposal. The successful bidder or offeror must become approved before the award and the existence of this approval requirement must be stated in the solicitation. If an unapproved vendor is selected for award, the vendor's bid or proposal may be rejected if that vendor fails to become approved within sixty days or within a shorter period as specified in writing by the procurement officer. Before issuing a solicitation, the procurement officer may waive the approval requirement if the procurement officer determines, in consultation with the secretary of state, that registration with the secretary of state and appointment of an agent for service of process in this state are not required. The waiver of the approval requirement must be stated in the solicitation. In the event of a tie bid or proposal, the ~~registered approved~~ vendor must be given preference.

SECTION 14. OFFICE OF MANAGEMENT AND BUDGET - PROCUREMENT STUDY. During the 2003-04 interim, the director of the office of management and budget shall conduct a comprehensive study of the state procurement process, including all relevant laws, rules, and guidelines. The director shall prepare a bill to address inefficiencies, inconsistencies, and outmoded procurement provisions discovered as a result of this study and request introduction of the bill as an agency bill in the fifty-ninth legislative assembly.

SECTION 15. EFFECTIVE DATE. Sections 3, 5, and 6 of this Act become effective on July 1, 2004.

SECTION 16. EXPIRATION DATE. Sections 2 and 4 of this Act are effective through June 30, 2004, and after that date are ineffective.

Approved April 16, 2003

Filed April 16, 2003

CHAPTER 496**HOUSE BILL NO. 1075**

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

STATEWIDE FORMS MANAGEMENT PROGRAM

AN ACT to amend and reenact section 54-44.6-01 of the North Dakota Century Code, relating to the statewide forms management program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-44.6-01 of the North Dakota Century Code is amended and reenacted as follows:

54-44.6-01. Declaration of legislative intent. The legislative assembly finds and declares that there is a need to minimize the governmental paperwork burden for state and local government entities, individuals, businesses, and others; that the costs of collecting, maintaining, using, and disseminating information are constantly escalating due to the increasingly voluminous and complex nature of state statutes and regulations; that there is a need to coordinate, integrate, and to the extent practicable and appropriate, make uniform the information policies and practices in North Dakota; and that the governmental paperwork burden can best be eased by establishing a statewide forms management program within the ~~office of management and budget~~ information technology department.

Approved March 17, 2003
Filed March 17, 2003

CHAPTER 497**SENATE BILL NO. 2033**
(Legislative Council)
(Employee Benefits Programs Committee)**PEACE AND CORRECTIONAL OFFICER RETIREMENT**

AN ACT to create and enact two new subsections to section 54-52-01 and a new section to chapter 54-52 of the North Dakota Century Code, relating to participation by peace officers and correctional officers employed by political subdivisions in the defined benefit retirement plan; and to amend and reenact section 54-52-02.1, subsection 3 of section 54-52-05, and subsection 3 of section 54-52-17 of the North Dakota Century Code, relating to participation by peace officers and correctional officers employed by political subdivisions in the defined benefit retirement plan.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹⁸ **SECTION 1.** Two new subsections to section 54-52-01 of the North Dakota Century Code are created and enacted as follows:

"Correctional officer" means a participating member who is employed as a correctional officer by a political subdivision.

"Peace officer" means a participating member who is a peace officer as defined in section 12-63-01 and is employed as a peace officer by a political subdivision.

SECTION 2. AMENDMENT. Section 54-52-02.1 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.1. Political subdivisions authorized to join public employees retirement system.

1. A political subdivision may, on behalf of its permanent employees, on behalf of its peace officers and correctional officers separately from its other employees, and permanent noncertified employees only in the case of school districts, enter into agreements with the retirement board for the purpose of extending the benefits of the public employees retirement system, as provided in this chapter, to those employees. The agreement may, in accordance with this chapter, contain provisions relating to benefits, contributions, effective date, modification, administration, and other appropriate provisions as the retirement board and the political subdivision agree upon, but the agreement must provide that:

²¹⁸ Section 54-52-01 was also amended by section 15 of Senate Bill No. 2013, chapter 34, and section 2 of Senate Bill No. 2058, chapter 498.

- a. The political subdivision will contribute on behalf of each eligible employee an amount equal to that provided in section 54-52-06 or section 4 of this Act for peace officers and correctional officers participating separately from other political subdivision employees.
 - b. A portion of the moneys paid by the political subdivision may be used to pay administrative expenses of the retirement board.
2. Notwithstanding any other provision of law, a political subdivision having an existing police pension plan may merge that plan into the public employees retirement system under rules adopted by and in a manner determined by the board.
 3. Notwithstanding any other provision of this chapter, ~~no~~ a political subdivision of this state not currently participating in the public employees retirement system on June 30, 1977, may thereafter not become a participant in the retirement system until an actuarial study is performed under the direction of the board to calculate the cost of that portion of benefits to be paid by the retirement system to the employees of the political subdivision based on any prior service or on any service after June 30, 1977, and before the date of initial participation in the retirement system, or both; and the political subdivision has adopted a method, approved by the board, to pay the costs determined in this subsection over a period not to exceed twenty five years from June 30, 1977. No political subdivision may discontinue participation in the fund without first making such payment to the fund as may be necessary for the fund to pay the future benefits of the eligible employees of the political subdivision as determined on the basis of rules adopted by the board required employer contribution. The required employer contribution must be an amount determined sufficient to fund the normal cost and amortize any past service liability over a period not to exceed thirty years as determined by the board. Any fees incurred in performing the actuarial study must be paid for by the political subdivision in a manner determined by the board.

²¹⁹ **SECTION 3. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Each employer, at its option, may pay the employee contributions required by subsection 2 and sections 54-52-06.1 ~~and~~, 54-52-06.2, and section 4 of this Act. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these employee

²¹⁹ Section 54-52-05 was also amended by section 7 of Senate Bill No. 2058, chapter 498.

contributions from the same source of funds used in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board, in writing, by June fifteenth of each odd-numbered year.

SECTION 4. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

Contribution by peace officers and correctional officers employed by political subdivisions - Employer contribution. Each peace officer or correctional officer employed by a political subdivision that enters into an agreement with the retirement board on behalf of its peace officers and correctional officers separately from its other employees and who is a member of the public employees retirement system is assessed and shall pay monthly four percent of the employee's monthly salary. The assessment must be deducted and retained out of the employee's salary in equal monthly installments. The peace officer's or correctional officer's employer shall contribute an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17. If the peace officer's or correctional officer's assessment is paid by the employer under subsection 3 of section 54-52-05, the employer shall contribute, in addition, an amount equal to the required peace officer's or correctional officer's assessment.

²²⁰ **SECTION 5. AMENDMENT.** Subsection 3 of section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

3. Retirement dates are defined as follows:
 - a. Normal retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by a political subdivision, is:
 - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
 - (2) When the member has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.
 - b. Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in which the national guard security officer or firefighter attains the

²²⁰ Section 54-52-17 was also amended by section 8 of Senate Bill No. 2058, chapter 498.

age of fifty-five years and has completed at least three consecutive years of employment as a national guard security officer or firefighter immediately preceding retirement.

- c. Normal retirement date for a peace officer or correctional officer employed by a political subdivision is:
- (1) The first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty-five years and has completed at least three consecutive years of employment as a peace officer or correctional officer immediately preceding retirement; or
 - (2) When the peace officer or correctional officer has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.
- d. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after reaching the normal retirement date.
- e. Early retirement date, except for a national guard security officer or firefighter or a peace officer or correctional officer employed by a political subdivision, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed three years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least three years of eligible employment. For a peace officer or correctional officer employed by a political subdivision, early retirement date is the first day of the month next following the month in which the peace officer or correctional officer attains the age of fifty years and has completed at least three years of eligible employment.
- f. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. For supreme and district court judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03. A member is eligible to receive disability retirement benefits only if the member:
- (1) Became disabled during the period of eligible employment; and
 - (2) Applies for disability retirement benefits within twelve months of the date the member terminates employment.

A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board may discontinue the disability retirement benefit. The board may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are appropriated from the retirement fund for those purposes.

Approved April 24, 2003

Filed April 24, 2003

CHAPTER 498

SENATE BILL NO. 2058

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

PERS ADMINISTRATION

AN ACT to create and enact sections 54-52-02.11 and 54-52-02.12, a new subsection to section 54-52-17.4, two new sections to chapter 54-52, three new subsections to section 54-52-26, section 54-52.2-03.3, and two new sections to chapter 54-52.6 of the North Dakota Century Code, relating to participation, service credit purchases, confidentiality under the public employees retirement system, contributions to a defined contribution plan account, qualified domestic relations order applicability to the deferred compensation program, and compliance with the Internal Revenue Code; to amend and reenact section 28-22-19, subsections 3, 7, 10, and 14 of section 54-52-01, sections 54-52-02 and 54-52-02.5, subsection 3 of section 54-52-05, sections 54-52-17, 54-52-17.2, 54-52-17.4, and 54-52-27, subsection 1 of section 54-52.1-03.3, section 54-52.2-06, and subsection 4 of section 54-52.6-13 of the North Dakota Century Code, relating to exemptions from legal process, definitions, membership, contributions, benefits, service credit, conversion of sick leave, and retiree health benefits under the public employees retirement system and account refunds for members of the defined contribution retirement system; and to repeal section 54-52-17.8 of the North Dakota Century Code, relating to benefit limitations under the public employees retirement system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-22-19 of the North Dakota Century Code is amended and reenacted as follows:

28-22-19. Exemptions from legal process - Public pensions, assistance, and awards. The following amounts are exempt from liability for debts of the person to or on account of whom the amounts are paid, and are not subject to seizure upon execution or other process:

1. All pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by sections 15-39.1-12.2, 39-03.1-14.2, ~~and 54-52-17.6, and 54-52.2-03.3,~~ a state agency, a political subdivision of the state, or a firefighters relief association for retirement, annuity, pension, disability benefit, or death benefit purposes.
2. All awards made pursuant to chapter 54-23.4 as compensation for victims of crimes.
3. All payments of assistance as aid to dependent children pursuant to chapter 50-09.

²²¹ **SECTION 2. AMENDMENT.** Subsections 3, 7, 10, and 14 of section 54-52-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "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 ~~who elect to remain members of the retirement system; provided, that judges of the supreme and district courts eligible under section 54-52-02.3 and appointed officials who elect to participate under section 54-52-02.5 are eligible employees and shall participate in the public employees retirement system under sections 54-52-02.5, 54-52-02.11, and 54-52-02.12.~~ 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.
7. "Governmental unit" means the state of North Dakota, except the highway patrol for members of the retirement plan created under chapter 39-03.1, or a participating political subdivision thereof.
10. "Permanent employee" means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position in an eligible governmental unit, and is employed twenty hours or more per week and at least ~~five months~~ twenty weeks each year of employment.
14. "Retirement" means the acceptance of a retirement allowance under this chapter upon either termination of employment or termination of participation in the retirement plan and meeting the normal retirement date.

SECTION 3. AMENDMENT. Section 54-52-02 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02. Formulation of plan - Exclusion of employees covered by plans in existence. All departments, boards, institutions, commissions, or agencies of the state of North Dakota, the Garrison diversion conservancy district, district health units, the supreme court, and the district courts, hereinafter referred to as agency, shall participate in a retirement system which will provide for the payment of benefits to state and political subdivision employees or to their beneficiaries thereby enabling the employees to care for themselves and their dependents and which by its provisions will improve state and political subdivision employment, reduce excessive personnel turnover, and offer career employment to high-grade men and women. However, a city health department providing health services in a city-county health district formed under chapter 23-35 is not required to participate in the public employees retirement system but may participate in the public employees retirement system under section 54-52-02.1. Employees presently covered by a pension plan or retirement plan to which the state is contributing, except social security, are not

²²¹ Section 54-52-01 was also amended by section 1 of Senate Bill No. 2033, chapter 497, and section 15 of Senate Bill No. 2013, chapter 34.

eligible for duplicate coverage except as provided under sections 39-03.1-14.1 and 54-52-17.2.

SECTION 4. AMENDMENT. Section 54-52-02.5 of the North Dakota Century Code is amended and reenacted as follows:

54-52-02.5. Newly elected and appointed state officials. After December 31, 1999, a person elected or appointed to a state office for the first time must, from and after the date that person qualifies and takes office, be a participating member of the public employees retirement system unless that person makes an election at any time during the first six months after the date the person takes office to participate in the retirement plan established under chapter 54-52.6. As used in this section, the phrase "for the first time" means a person appointed, who, after December 31, 1999, does not hold office as an appointed official at the time of that person's appointment.

SECTION 5. Section 54-52-02.11 of the North Dakota Century Code is created and enacted as follows:

54-52-02.11. Participation requirements for nonstate elected officials. Elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.

SECTION 6. Section 54-52-02.12 of the North Dakota Century Code is created and enacted as follows:

54-52-02.12. Participation requirements for nonstate appointed officials. Nonstate appointed officials of participating employers appointed on or after August 1, 1999, who meet the participation requirements of this chapter must be enrolled in the defined benefit plan effective within the first month of taking office.

²²² **SECTION 7. AMENDMENT.** Subsection 3 of section 54-52-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Each employer, at its option, may pay all or a portion of the employee contributions required by subsection 2 and sections 54-52-06.1 and 54-52-06.2 or the employee contributions required to purchase service credit on a pretax basis pursuant to subsection 6 of section 54-52-17.4. Employees may not receive the contributed amounts directly once the employer has elected to pay the employee contributions. The amount paid must be paid by the employer in lieu of contributions by the employee. If the state determines not to pay the contributions, the amount that would have been paid must continue to be deducted from the employee's compensation. If contributions are paid by the employer, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the employer, they may not be included as gross income of the employee in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The employer shall pay these employee contributions from

²²² Section 54-52-05 was also amended by section 3 of Senate Bill No. 2033, chapter 497.

the same source of funds used in paying compensation to the employee or from the levy authorized by subsection 5 of section 57-15-28.1. The employer shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a contribution of a reduction in gross salary and offset against future salary increases. If employee contributions are paid by the employer, they must be treated for the purposes of this chapter in the same manner and to the same extent as employee contributions made prior to the date on which employee contributions were assumed by the employer. An employer exercising its option under this subsection shall report its choice to the board, in writing, by June fifteenth of each odd-numbered year.

²²³ **SECTION 8. AMENDMENT.** Section 54-52-17 of the North Dakota Century Code is amended and reenacted as follows:

54-52-17. Formulation of plan. Participating members shall receive benefits according to this section and according to rules adopted by the board, not inconsistent with this chapter. No person is entitled to receive a prior service benefit if the person was not continuously employed by a governmental unit in North Dakota for a period of not less than two years immediately prior to eligibility for retirement.

1. Participating members shall receive credit for full-time employment or its equivalent from the date they attain eligibility until their normal retirement date, postponed retirement date, or early retirement date, as defined in this section. Part-time employment will be recognized as full-time employment on a prorated basis as the board may prescribe.
2. Retirement benefits are calculated from the participating member's final average salary, which is the average of the highest salary received by the member for any thirty-six months employed during the last one hundred twenty months of employment. Months not employed 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.
3. Retirement dates are defined as follows:
 - a. Normal retirement date, except for a national guard security officer or firefighter, is:
 - (1) The first day of the month next following the month in which the member attains the age of sixty-five years; or
 - (2) When the member has a combined total of years of service credit and years of age equal to eighty-five and has not received a retirement benefit under this chapter.

²²³ Section 54-52-17 was also amended by section 5 of Senate Bill No. 2033, chapter 497.

- b. Normal retirement date for a national guard security officer or firefighter is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty-five years and has completed at least three consecutive years of employment as a national guard security officer or firefighter immediately preceding retirement.
- c. Postponed retirement date is the first day of the month next following the month in which the member, on or after July 1, 1977, actually severs or has severed the member's employment after reaching the normal retirement date.
- d. Early retirement date, except for a national guard security officer or firefighter, is the first day of the month next following the month in which the member attains the age of fifty-five years and has completed three years of eligible employment. For a national guard security officer or firefighter, early retirement date is the first day of the month next following the month in which the national guard security officer or firefighter attains the age of fifty years and has completed at least three years of eligible employment.
- e. Disability retirement date is the first day of the month after a member becomes permanently and totally disabled, according to medical evidence called for under the rules of the board, and has completed at least one hundred eighty days of eligible employment. For supreme and district court judges, permanent and total disability is based solely on a judge's inability to perform judicial duties arising out of physical or mental impairment, as determined pursuant to rules adopted by the board or as provided by subdivision a of subsection 3 of section 27-23-03. A member is eligible to receive disability retirement benefits only if the member:
 - (1) Became disabled during the period of eligible employment; and
 - (2) Applies for disability retirement benefits within twelve months of the date the member terminates employment.

A member is eligible to continue to receive disability benefits as long as the permanent and total disability continues and the member submits the necessary documentation and undergoes medical testing required by the board, or for as long as the member participates in a rehabilitation program required by the board, or both. If the board determines that a member no longer meets the eligibility definition, the board may discontinue the disability retirement benefit. The board may pay the cost of any medical testing or rehabilitation services it deems necessary and these payments are appropriated from the retirement fund for those purposes.

- 4. The board shall calculate retirement benefits as follows:
 - a. Normal retirement benefits for all retirees, except supreme and district court judges, reaching normal retirement date equal an annual amount, payable monthly, comprised of a service benefit

and a prior service benefit, as defined in this chapter, which is determined as follows:

- (1) Service benefit equals two percent of final average salary multiplied by the number of years of service employment.
 - (2) Prior service benefit equals two percent of final average salary multiplied by the number of years of prior service employment.
- b. Normal retirement benefits for all supreme and district court judges under the public employees retirement system reaching normal retirement date equal an annual amount, payable monthly, comprised of a benefit as defined in this chapter, determined as follows:
- (1) Benefits must be calculated from the time of appointment or election to the bench and must equal three and one-half percent of final average salary multiplied by the first ten years of judicial service, two and eighty hundredths percent of final average salary multiplied by the second ten years of judicial service, and one and one-fourth percent of final average salary multiplied by the number of years of judicial service exceeding twenty years.
 - (2) Service benefits must include, in addition, an amount equal to the percent specified in subdivision a of final average salary multiplied by the number of years of nonjudicial employee service and employment.
- c. Postponed retirement benefits are calculated as for single life benefits for those members who retired on or after July 1, 1977.
- d. Early retirement benefits are calculated as for single life benefits accrued to the date of termination of employment, but must be actuarially reduced to account for benefit payments beginning prior to the normal retirement date, which is the earlier of age sixty-five or the age at which current service plus age equals eighty-five. A retiree, other than a supreme or district court judge, is eligible for early retirement benefits only after having completed three years of eligible employment. A supreme or district court judge retiree is eligible for early retirement benefits only after having completed five years of eligible employment.
- e. Except for supreme and district court judges, disability retirement benefits are twenty-five percent of the member's final average salary. Disability retirement benefits for supreme and district court judges are seventy percent of final average salary reduced by the member's primary social security benefits and by any workers' compensation benefits paid. The minimum monthly disability retirement benefit under this section is one hundred dollars.
- f. ~~A participating member who is a vested permanent employee is entitled to purchase additional years of service credit to enable the member to qualify for the normal retirement date defined by subdivision a of subsection 3. The years of service purchased~~

~~must be added to the years of service employment under paragraph 4 of subdivision a for calculating the service benefit.~~

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.
6. If before retiring a member dies after completing three years of eligible employment, except for supreme and district court judges, who must have completed five years of eligible employment, the board shall pay the member's account balance to the member's designated beneficiary as provided in this subsection. If the member has designated an alternate beneficiary with the surviving spouse's written consent, the board shall pay the member's account balance to the named beneficiary. If the member has named more than one primary beneficiary, the board shall pay the member's account balance to the named primary beneficiaries in the percentages designated by the member or, if the member has not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the member, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If there are no remaining primary beneficiaries, the board shall pay the member's account balance to the contingent beneficiaries in the same manner. If there are no remaining designated beneficiaries, the board shall pay the member's account balance to the member's estate. If the member has not designated an alternate beneficiary or the surviving spouse is the beneficiary, the surviving spouse of the member may select a form of payment as follows:
 - a. If the member was a supreme or district court judge, the surviving spouse may select one of the following optional forms of payment:
 - (1) A lump sum payment of the member's retirement account as of the date of death.
 - (2) Payments as calculated for the deceased member as if the member was of normal retirement age at the date of death, payable until the spouse dies.
 - b. The surviving spouse of all other members may select one of the following options:
 - (1) A lump sum payment of the member's retirement account as of the date of death.
 - (2) Payments for sixty months as calculated for the deceased member as if the member was of normal retirement age at the date of death.
 - (3) Payment of a monthly retirement benefit equal to fifty percent of the deceased member's accrued single life retirement benefits until the spouse dies.

- (4) If the member dies on or after the member's normal retirement date, the payment of a monthly retirement benefit equal to an amount that would have been paid to the surviving spouse if the member had retired on the day of the member's death and had selected a one hundred percent joint and survivor annuity, payable until the spouse dies. A surviving spouse who received a benefit under this subsection as of July 31, 1995, is entitled to the higher of that person's existing benefit or the equivalent of the accrued benefit available under the one hundred percent joint and survivor provision as if the deceased member were of normal retirement age, with the increase payable beginning August 1, 1995.
7. If a member not coming under the provisions of subsection 6 terminates employment because of death, permanent and total disability, or any voluntary or involuntary reason prior to retirement, the member or the member's designated beneficiary is entitled to the member's account balance at termination. The board shall automatically refund a member's account balance if the member has completed less than three years of eligible employment and was not a supreme or district court judge. If the member was a supreme or district court judge, the board shall automatically refund a member's account balance if the member completed less than five years of eligible employment. A member may waive the refund if the member submits a written statement to the board, within thirty days after termination, requesting that the member's account balance remain in the fund.
8. The surviving spouse of a member receiving retirement benefits must be the member's primary beneficiary unless there is no surviving spouse or the surviving spouse designates an alternate beneficiary in writing. If a member receiving retirement benefits or the member's surviving spouse receiving retirement benefits dies before the total amount of benefits paid to either or both equals the amount of the member's account balance at retirement, the difference must be paid to the named beneficiary of the recipient or, if there is no named beneficiary, to the recipient's estate.
9. The board shall adopt rules providing for the receipt of retirement benefits in the following optional forms:
 - a. Single life.
 - b. An actuarially equivalent joint and survivor option, with fifty percent or one hundred percent options.
 - c. An actuarially equivalent level social security option, which is available only to members who retire prior to attaining the age at which they may begin to receive unreduced social security benefits.
 - d. Life with five-year or ten-year certain options.

Except for supreme and district court judges, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement

benefits must be in the form of a single life benefit. For supreme and district court judges, unless a member specifically requests that the member receive benefits according to one of these options at the time of applying for retirement, all retirement benefits must be in the form of a lifetime monthly pension with fifty percent of the benefit continuing for the life of the surviving spouse, if any.

10. The fund may accept rollovers from other ~~qualified~~ eligible plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code.
11. The board may accept trustee-to-trustee transfers as permitted by Internal Revenue Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue Code section 403(b) annuity or Internal Revenue Code section 457 deferred compensation plan for the purchase of permissive service credit, as defined in Internal Revenue Code section 415(n)(3)(A) or as repayment of a cashout from a governmental plan under Internal Revenue Code section 415(k)(3).
12. The board may establish individual retirement accounts and individual retirement annuities as permitted under section 408(q) of the Internal Revenue Code to allow employees to make voluntary employee contributions. The board may adopt rules to implement and administer the accounts and annuities under this section.

SECTION 9. AMENDMENT. Section 54-52-17.2 of the North Dakota Century Code is amended and reenacted as follows:

54-52-17.2. Multiple plan membership - Eligibility for benefits - Amount of benefits.

1. a. For the purpose of determining eligibility for benefits under this chapter, an employee's years of service ~~employment credit~~ is the total of the years of service ~~employment credit~~ earned in the public employees retirement system and the years of service credit earned in any number of the following:
 - (1) The teachers' fund for retirement.
 - (2) The highway patrolmen's retirement system.
 - (3) The teachers' insurance and annuity association of America - college retirement equities fund (TIAA-CREF), for service credit earned while employed by North Dakota institutions of higher education.

Service credit may not exceed twelve months of credit per year.

- b. ~~If an employee terminates eligible employment under the system, if that employee has not received a refund of the employee's account balance, and if the employee begins eligible employment in a plan described in paragraph 1, 2, or 3 of subdivision a, that employee may elect to remain an inactive member of the system without refund of the employee's account balance. The election must be made within ninety days after beginning the eligible employment.~~

The board shall terminate the inactive status of an employee under this subdivision if the employee gains eligible employment under this chapter or if the employee terminates eligible employment under a plan described in paragraph 1, 2, or 3 of subdivision a.

- e. ~~An~~ Pursuant to rules adopted by the board, an employee who has service credit in the system and in any ~~number~~ of the plans described in paragraphs 1, ~~and 2, and 3~~ of subdivision a is entitled to benefits under this chapter ~~calculated by using the certified salaries of the retirement plan of last membership.~~ The employee may elect to have benefits calculated using the benefit formula in section 54-52-17 under either of the following methods:

- (1) 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 in the public employees retirement system. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.
- (2) The average of the highest salary received by the member for any thirty-six consecutive months during the last one hundred twenty months of employment with any of the three eligible employers under this subdivision, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

The board shall calculate benefits for an employee under this subsection by using only those years of service employment credit earned under this chapter.

2. a. If an employee, who is a participating member, is also employed in any position where membership in the teachers' fund for retirement is required, then for purposes of current employment the employee is a member of the retirement system in which the employee has the most years of service employment. If the employee has an equal amount of service in both the public employees retirement system and the teachers' fund for retirement, the employee is a member of the public employees retirement system. The board of trustees of the teachers' fund for retirement and the state retirement board shall jointly certify to the appropriate employers of the employee the fact of the beginning and termination of eligibility for dual membership in the respective retirement systems and the retirement system to which the employee is required to be a member under this subsection. The employers upon receipt of this certification shall pay over to that retirement system the member assessments and employer contributions at the rates currently existing for that retirement system. If the employee is required to be a member of the teachers' fund for retirement, the board, at the employee's election, shall designate the employee an inactive member of the public employees retirement system until the employee ceases the employment which requires membership in both the public employees retirement system and the teachers' fund for retirement who is eligible to participate in the public employees retirement system is also employed in any position

when membership in an alternate retirement system is required, then, for purposes of current participation, the employee is a member of each applicable retirement system. The employer shall pay over to each retirement system the member assessment and employer contributions at the rates currently existing for that retirement system.

- b. If an employee described in subdivision a was employed prior to August 1, 2003, and has dual membership rights, the employee may elect to begin participation in the alternate plan pursuant to the plan provisions on August 1, 2003, or may continue participation according to the plan provisions in effect on July 31, 2003. An employee's election under this subdivision is ineffective unless delivered to the public employees retirement system administrative offices by five p.m. on October 31, 2003. If an election is not received by the public employees retirement system, the participation and benefit calculation requirements in effect on July 31, 2003, apply to that employee.

- ~~3. Under rules adopted by the board, an individual whose service credit was canceled when that individual received a refund of assessments at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 1, 2, or 3 of subdivision a of subsection 4, repurchase that service credit that was canceled.~~

²²⁴ **SECTION 10.** A new subsection to section 54-52-17.4 of the North Dakota Century Code is created and enacted as follows:

In addition to service credit identified in this section, a vested member may purchase up to five years of service credit unrelated to any other eligible service.

²²⁵ **SECTION 11. AMENDMENT.** Section 54-52-17.4 of the North Dakota Century Code is amended and reenacted as follows:

**54-52-17.4. (Contingent effective date and expiration date - See note)
Purchase of additional credit.**

1. A member may elect to purchase credit for years of service and prior service for which the member is not presently receiving credit. A 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 employment in the armed forces of the United States, except as provided in subsection 5, for up to four years of credit.

²²⁴ Section 54-52-17.4 was also amended by section 17 of Senate Bill No. 2013, chapter 34, and section 11 of Senate Bill No. 2058, chapter 498.

²²⁵ Section 54-52-17.4 was also amended by section 10 of Senate Bill No. 2058, chapter 498, and section 17 of Senate Bill No. 2013, chapter 34.

- b. ~~Employment as a permanent employee by a governmental unit that does not participate in the public employees retirement system under this chapter~~ 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 of a governmental unit not located in North Dakota.~~
 - ~~g.~~ Employment as a permanent employee by the federal government.
2. A participating member may elect to purchase credit for the following absences for which the participating member is not receiving service credit:
 - a. Employer-approved leave of absence; or
 - b. Months away from work while participating as a seasonal employee.
 3. Supreme and district court judges under the public employees retirement system may elect to purchase credit for the following years of service:
 - a. Except as provided in subsection 5, for up to four years of credit for active employment in the armed forces of the United States.
 - b. As a county judge in a county or counties that did not participate in the public employees retirement system under this chapter.
 - c. Participation in the public employees retirement system as a county judge may be converted to credit in the judges retirement system.
 4. The member may purchase credit under this section, or the member's employer may purchase for the member, by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. If the member purchases credit pursuant to subdivision d of subsection 1, the 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 member received upon taking a refund of the member's account balance, plus interest at the actuarial rate of return from the time the member was issued the refund. If the member is not repurchasing all of the credit originally refunded, the 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 member seeks to repurchase, and adding interest at the actuarial rate of return. The member or the 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. A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the ~~member's most recent monthly~~ salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased; ~~plus interest at a rate determined by the board.~~ If the member makes the above payment, the governmental unit, or, in the case of a member not under covered employment, the last employing governmental unit, shall pay four and twelve-hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 one percent times the ~~member's present monthly~~ salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the member's months of credit being purchased. For credit before July 1, 1966, no contribution is required.

(Contingent effective date and expiration date - See note) Purchase of additional credit.

1. A member may elect to purchase credit for years of service and prior service for which the member is not presently receiving credit. A 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 employment in the armed forces of the United States, except as provided in subsection 5, for up to four years of credit.

- b. ~~Employment as a permanent employee by a governmental unit that does not participate in the public employees retirement system under this chapter~~ 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 of a governmental unit not located in North Dakota.~~
 - ~~g.~~ Employment as a permanent employee by the federal government.
2. A participating member may elect to purchase credit for the following absences for which the participating member is not receiving service credit:
 - a. Employer-approved leave of absence; or
 - b. Months away from work while participating as a seasonal employee.
 3. Supreme and district court judges under the public employees retirement system may elect to purchase credit for the following years of service:
 - a. Except as provided in subsection 5, for up to four years of credit for active employment in the armed forces of the United States.
 - b. As a county judge in a county or counties that did not participate in the public employees retirement system under this chapter.
 - c. Participation in the public employees retirement system as a county judge may be converted to credit in the judges retirement system.
 4. The member may purchase credit under this section, or the member's employer may purchase for the member, by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. If the member purchases credit pursuant to subdivision d of subsection 1, the 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 member received upon taking a refund of the member's account balance, plus interest at the actuarial rate of return from the time the member was issued the refund. If the member is not repurchasing all of the credit originally refunded, the 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 member seeks to repurchase, and adding interest at the actuarial rate of return. The member or the 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. A participating member, or a member not presently under covered employment, may request credit for qualified military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the member's most recent monthly salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased; ~~plus interest at a rate determined by the board.~~ If the member makes the above payment, the governmental unit, or, in the case of a member not under covered employment, the last employing governmental unit, shall pay four and twelve-hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the number of months of credit being purchased. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 one percent times the member's present monthly salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the member's months of credit being purchased. For credit before July 1, 1966, no contribution is required.
6. Pursuant to rules adopted by the board, the board may allow a member to purchase service credit with either pretax or aftertax moneys, at the board's discretion. If the 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.

SECTION 12. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

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 as it applies for governmental plans.

SECTION 13. A new section to chapter 54-52 of the North Dakota Century Code is created and enacted as follows:

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.
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 14. Three new subsections to section 54-52-26 of the North Dakota Century Code are created and enacted as follows:

Beneficiaries designated by a participating member or a former participating member to receive benefits after the member's death, but only after the member's death. Information relating to beneficiaries may be disclosed to other beneficiaries of the same member.

The general public, but only after the board has been unable to locate the member for a period in excess of two years, and limited to the member's name and the fact that the board has been unable to locate the member.

Any person if the board determines disclosure is necessary for treatment, operational, or payment purposes, including the completion of necessary documents.

SECTION 15. AMENDMENT. Section 54-52-27 of the North Dakota Century Code is amended and reenacted as follows:

54-52-27. Conversion Purchase of sick leave credit. At termination of eligible employment 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 16. AMENDMENT. Subsection 1 of section 54-52.1-03.3 of the North Dakota Century Code is amended and reenacted as follows:

1. The following persons are entitled to receive credit for hospital and medical benefits coverage under subsection 2:
 - a. A member or surviving spouse of the highway patrolmen's retirement system receiving retirement benefits, or the surviving spouse of a member of the highway patrolmen's retirement system who was eligible to receive or was receiving retirement benefits, under section 39-03.1-14 is eligible for the credit beginning on the date retirement benefits are effective unless the premium is billed to the employer.
 - b. A member or surviving spouse of the public employees retirement system receiving retirement benefits, or the surviving spouse of a member of the public employees retirement system who was eligible to receive or was receiving retirement benefits, under section 54-52-17 is eligible for the credit beginning on the date retirement benefits are effective unless the premium is billed to the employer.
 - c. A member or surviving spouse of the retirement program established by job service North Dakota under section 52-11-01 receiving retirement benefits, or the surviving spouse of a member of that retirement program who was eligible to receive or was receiving retirement benefits, under the plan provisions of that retirement program is eligible for the credit beginning on the date retirement benefits are effective unless the premium is billed to the employer.
 - d. A retired judge or surviving spouse receiving retirement benefits under the retirement program established under chapter 27-17, or the surviving spouse of a retired judge who was eligible to receive or was receiving retirement benefits, under section 27-17-04 is eligible for the credit beginning on the date retirement benefits are effective unless the premium is billed to the employer.
 - e. A former participating member of the defined contribution retirement plan receiving retirement benefits, or the surviving spouse of a former participating member of that retirement plan who was eligible to receive or was receiving benefits, under section 54-52.6-13, is eligible as determined by the board pursuant to its rules.

SECTION 17. Section 54-52.2-03.3 of the North Dakota Century Code is created and enacted as follows:

54-52.2-03.3. Benefit payments to alternate payee under qualified domestic relations order.

1. The board or a vendor contracted for by the board shall apportion a participating member's account in the deferred compensation plan under this chapter in accordance with the applicable requirements of any qualified domestic relations order. The board shall review a domestic relations order submitted to the board to determine if the domestic relations order is qualified under this section and pursuant to the plan document established by the board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders.
2. A "qualified domestic relations order" for purposes of this section means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, spousal support, or marital property rights to a spouse, former spouse, child, or other dependent of a participating member, is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a part of the benefits payable to the participating member. A qualified domestic relations order may not require the board to provide any type or form of benefit, or any option, not otherwise provided under this chapter, or to provide increased benefits. A qualified domestic relations order must specify:
 - a. The name and the last-known mailing address of the participating member and the name and mailing address of each alternate payee covered by the order;
 - b. The amount or percentage of the participating member's benefits to be paid by the plan to each alternate payee;
 - c. That the alternate payee must take a lump sum payment of the benefits allocated to the alternate payee within one hundred twenty days of the later of the board's acceptance of the qualified domestic relations order or the entry of the order by the court; and
 - d. Each plan to which the order applies.

SECTION 18. A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

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;
2. The equivalent of up to five years of service credit unrelated to any other eligible service as provided in subsection 5 of section 13 of this Act.

SECTION 19. A new section to chapter 54-52.6 of the North Dakota Century Code is created and enacted as follows:

Contributions for military service. A participating member, or a member not presently under covered employment, may request credit and contributions for qualified military service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 [Pub. L. 103-353; 108 Stat. 3150; 38 U.S.C. 4301-4307]. The member shall submit a qualified application with proof of eligible military service to the board in order to receive credit for military service. For credit on and after July 1, 1966, the member must pay four percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding such period, times the number of months for which the member is making contributions. If the member makes the above payment, the governmental unit, or, in the case of a member not under covered employment, the last employing governmental unit, shall pay four and twelve-hundredths percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding such period, times the number of months for which the member made contributions. In addition, the governmental unit, or in the case of a member not under covered employment the last employing governmental unit, shall pay to the retiree health benefits fund established under section 54-52.1-03.2 one percent times the salary the member would have received but for the period of service or, if that amount is not reasonably certain, the member's average rate of compensation during the twelve-month period immediately preceding the member's period of service or, if shorter, the period of employment immediately preceding that period, times the member's months for which the member made contributions. For credit before July 1, 1966, no contribution is required.

SECTION 20. AMENDMENT. Section 54-52.2-06 of the North Dakota Century Code is amended and reenacted as follows:

54-52.2-06. Deferred compensation program - Benefits - Taxation - Exemption from judicial process - Assignment. The deferred compensation program established by this chapter shall exist and serve in addition to retirement, pension, or benefit systems established by the state, county, city, town, or other political subdivision, and no deferral of income under the deferred compensation program shall effect a reduction of any retirement, pension, or other benefit provided by law. However, any sum deferred under the deferred compensation program is not subject to taxation until distribution is actually made to the employee. Any unpaid benefits under the deferred compensation program established by this chapter are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, except as provided by section 54-52.2-03.3. Neither the employee, the employee's beneficiary, nor any designee of the employee or the employee's beneficiary has the right to commute, sell, assign, transfer, or otherwise convey the right to receive payments under this chapter.

SECTION 21. 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 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 ~~thirty~~ one hundred twenty days after termination, requesting that the member's vested account balance remain in the plan.

SECTION 22. REPEAL. Section 54-52-17.8 of the North Dakota Century Code is repealed.

Approved April 4, 2003
Filed April 4, 2003

CHAPTER 499

SENATE BILL NO. 2060

(Government and Veterans Affairs Committee)
(At the request of the Public Employees Retirement System)

GROUP INSURANCE ADMINISTRATIVE CHANGES

AN ACT to create and enact a new section to chapter 54-52.1 of the North Dakota Century Code, relating to an employer-based wellness program; and to amend and reenact subsection 4 of section 54-52.1-01, subsection 3 of section 54-52.1-03, and sections 54-52.1-03.1, 54-52.1-11, and 54-52.3-05 of the North Dakota Century Code, relating to eligibility for and employee payments to the uniform group insurance program and confidentiality of information under the uniform group insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁶ **SECTION 1. AMENDMENT.** Subsection 4 of section 54-52.1-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Eligible employee" means every permanent employee who is employed by a governmental unit, as that term is defined in section 54-52-01. "Eligible employee" includes members of the legislative assembly, judges of the supreme court, paid members of state or political subdivision boards, commissions, or associations, full-time employees of political subdivisions, elective state officers as defined by subsection 2 of section 54-06-01, and disabled permanent employees who are receiving compensation from the North Dakota workers' compensation fund. As used in this subsection, "permanent employee" means one whose services are not limited in duration, who is filling an approved and regularly funded position in a governmental unit, and who is employed at least seventeen and one-half hours per week and at least five months each year or for those first employed after August 1, 2003, is employed at least twenty hours per week and at least twenty weeks each year of employment. For purposes of sections 54-52.1-04.1, 54-52.1-04.7, 54-52.1-04.8, and 54-52.1-11, "eligible employee" includes retired and terminated employees who remain eligible to participate in the uniform group insurance program pursuant to applicable state or federal law.

SECTION 2. AMENDMENT. Subsection 3 of section 54-52.1-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A retiree who has accepted a periodic distribution from the defined contribution retirement plan pursuant to section 54-52.6-13 who the board determines is eligible for participation in the uniform group insurance program or has accepted a retirement allowance from the

²²⁶ Section 54-52.1-01 was also amended by section 35 of Senate Bill No. 2046, chapter 48.

public employees retirement system, the highway patrolmen's retirement system, the teachers' insurance and annuity association of America - college retirement equities fund (~~TIAA-CREF~~) for service credit earned while employed by North Dakota institutions of higher education, the retirement system established by job service North Dakota under section 52-11-01, the judges' retirement system established under chapter 27-17, or the teachers' fund for retirement may elect to participate in the uniform group under this chapter without meeting minimum requirements at age sixty-five, when the member's spouse reaches age sixty-five, upon the receipt of a benefit, or when the spouse terminates employment. If a retiree or surviving spouse does not elect to participate at the times specified in this subsection, the retiree or surviving spouse must meet the minimum requirements established by the board. Subject to sections 54-52.1-03.2 and 54-52.1-03.3, each retiree or surviving spouse shall pay directly to the board the premiums in effect for the coverage then being provided. A retiree who has met the initial eligibility requirements of this subsection to begin participation in the uniform group insurance program remains eligible as long as the retiree maintains the retiree's participation in the program by paying the required premium pursuant to rules adopted by the board.

²²⁷ **SECTION 3. 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 political subdivision may determine the amount of the employer's monthly contribution toward the total monthly premium amount required of each eligible participating employee.~~

SECTION 4. A new section to chapter 54-52.1 of the North Dakota Century Code is created and enacted as follows:

Wellness program. The board shall develop an employer-based wellness program. The program must encourage employers to adopt a board-developed wellness program by either charging extra health insurance premium to nonparticipating employers or reducing premium for participating employers.

SECTION 5. AMENDMENT. Section 54-52.1-11 of the North Dakota Century Code is amended and reenacted as follows:

²²⁷ Section 54-52.1-03.1 was also amended by section 1 of Senate Bill No. 2176, chapter 500.

54-52.1-11. Confidentiality of employee records. Information pertaining to an eligible employee's group medical records for claims, employee premium payments made, salary reduction amounts taken, history of any available insurance coverage purchased, and amounts and types of insurance applied for under the supplemental life insurance coverage under this chapter is confidential and is not a public record. The information and records may be disclosed, under rules adopted by the board, only to:

1. A person to whom the eligible employee has given written ~~consent~~ authorization to have the information disclosed.
2. A person legally representing the eligible employee, upon proper proof of representation, and unless the eligible employee specifically withholds ~~consent~~ authorization.
3. A person authorized by a court order.
4. A person or entity to which the board is required to disclose information pursuant to federal or state statutes or regulations.
5. ~~If involved in a dissolution proceeding, the member's spouse or former spouse, that person's legal representative, and the judge presiding over the member's dissolution proceeding.~~ Any person or entity if the purpose of the disclosure is for treatment, payment, or health care operations.

SECTION 6. AMENDMENT. Section 54-52.3-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52.3-05. Confidentiality of program records. Any records and information pertaining to a public employee's medical and dependent care reimbursement under the pretax benefits program are confidential and are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota. The records and information may be disclosed, under rules adopted by the board, only to:

1. A person to whom the employee has given written ~~consent~~ authorization to have the information disclosed.
2. A person legally representing the employee, upon proper proof of representation.
3. A person authorized by a court order.
4. A person or entity to which the board is required to disclose information pursuant to federal or state statutes or regulations.
5. Any person or entity if the purpose of the disclosure is for health care treatment, payment, or operations.

CHAPTER 500**SENATE BILL NO. 2176**

(Senators Wardner, Brown, Nelson)

(Representatives Glassheim, Haas, N. Johnson)

UNIFORM GROUP INSURANCE PARTICIPATION

AN ACT to amend and reenact section 54-52.1-03.1 of the North Dakota Century Code, relating to participation by retired political subdivision employees in the uniform group insurance program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²²⁸ **SECTION 1. 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 political subdivision may determine the amount of the employer's monthly contribution toward the total monthly premium amount required of each eligible participating employee. 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 19, 2003

Filed March 19, 2003

²²⁸ Section 54-52.1-03.1 was also amended by section 3 of Senate Bill No. 2060, chapter 499.

CHAPTER 501

SENATE BILL NO. 2077

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

STATE EMPLOYEE FAMILY LEAVE

AN ACT to amend and reenact subsection 2 of section 54-52.4-01 and sections 54-52.4-02, 54-52.4-04, and 54-52.4-05 of the North Dakota Century Code, relating to state employee family leave entitlements, notices to employers, and certifications for leave.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 54-52.4-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Employee" means an individual employed in this state by an employer, ~~whose employment is not limited in duration, who is employed for an average of at least twenty hours per week, and who has been employed by the same employer for at least one year~~ has been employed by the employer for at least twelve months, and who has worked at least one thousand two hundred fifty hours for the employer over the previous twelve months.

SECTION 2. AMENDMENT. Section 54-52.4-02 of the North Dakota Century Code is amended and reenacted as follows:

54-52.4-02. Family leave.

1. An employer shall grant an employee's request for a family leave of absence for any of the following reasons:
 - a. To care for the employee's child by birth, if the leave ~~begins~~ concludes within ~~sixteen weeks~~ twelve months of the child's birth.
 - b. To care for a child placed with the employee, by a child-placing agency licensed under chapter 50-12, for adoption or as a precondition to adoption under section 14-15-12, but not both, or for foster care, if the leave ~~begins~~ concludes within ~~sixteen weeks~~ twelve months of the child's placement.
 - c. To care for the employee's child, spouse, or parent if the child, spouse, or parent has a serious health condition.
 - d. Because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's job.
2. For any combination of reasons specified in subsection 1, an employee may take family leave ~~to be determined by the employer on a pro rata basis according to a formula based on the average number of hours per week that the employee is employed, whereby~~ in any twelve-month period ~~an employee who is employed for an average of twenty hours~~

per week during the preceding twelve months may take not more than two months of family leave and an employee who is employed for an average of forty or more hours per week during the preceding twelve months may take for not more than four months of family leave twelve workweeks. The twelve weeks of family leave may be taken intermittently for leave under subdivisions a or b of subsection 1 if approved by the employer. The twelve weeks of family leave may be taken intermittently for leave under subdivisions c or d of subsection 1 if the leave is medically necessary. If an employee normally works a part-time schedule or variable hours, the amount of leave to which an employee is entitled must be determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule.

3. In any case in which a husband and wife entitled to family leave under this chapter are employed by the same employer, the aggregate period of family leave to which both are entitled may be limited by the employer to ~~four months~~ twelve workweeks during any twelve-month period.
4. An employee shall reasonably consider the needs of the employer in scheduling family leave under this section or in using leave under section 54-52.4-03.
5. The family leave required by this chapter is not required to be granted with pay unless otherwise specified by agreement between the employer and employee, by collective bargaining agreement, or by employer policy.
6. The family leave required by this chapter supplements any leave otherwise available to an employee.

SECTION 3. AMENDMENT. Section 54-52.4-04 of the North Dakota Century Code is amended and reenacted as follows:

54-52.4-04. Notice to employer.

1. If an employee intends to request family leave for the reasons specified in subdivision a or b of subsection 1 of section 54-52.4-02, the employee, in a reasonable and practicable manner, shall give the employer advance notice of the expected birth or placement.
2. If an employee intends to take family leave for the ~~reason~~ reasons specified in subdivision c or d of subsection 1 of section 54-52.4-02, the employee shall:
 - a. Make a reasonable effort to schedule the planned care or treatment so that it does not unduly disrupt the employer's operations, subject to the approval of the health care provider to the child, spouse, ~~or parent,~~ or employee; and
 - b. Give the employer advance notice of the planned care or treatment in a reasonable and practicable manner.

SECTION 4. AMENDMENT. Section 54-52.4-05 of the North Dakota Century Code is amended and reenacted as follows:

54-52.4-05. Certification for leave to care for child, spouse, ~~or~~ parent, or employee's serious health condition.

1. If an employee requests family leave for ~~a reason~~ the reasons described in subdivision c or d of subsection 1 of section 54-52.4-02 or leave under section 54-52.4-03, the employer may require the employee to provide certification, as described in subsection 2, from the provider of health care to the child, spouse, ~~or~~ parent, or employee.
2. An employer may not require certification of more than:
 - a. That the child, spouse, ~~or~~ parent, or employee has a serious health condition.
 - b. The date the serious health condition commenced and its probable duration.
 - c. Within the knowledge of the health care provider, the medical facts regarding the serious health condition.

Approved March 19, 2003
Filed March 19, 2003

CHAPTER 502**HOUSE BILL NO. 1087**

(Transportation Committee)

(At the request of the State Board of Higher Education)

**TRANSPORTATION INSTITUTE PURPOSE AND
ADVISORY COUNCIL**

AN ACT to amend and reenact sections 54-53-02 and 54-53-03 of the North Dakota Century Code, relating to composition of the advisory transportation council and purpose 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 ~~a traffic counsel selected by the members of the council, a representative of the railways serving the state who is selected by the council, and~~ one representative from and appointed by the following ~~organizations~~:

1. The greater North Dakota association.
2. The North Dakota public service commission.
3. The North Dakota farm bureau.
4. The North Dakota farmers union.
5. The North Dakota ~~stockmen's~~ grain growers association.
6. The North Dakota state wheat commission.
7. The North Dakota department of commerce ~~division of economic development and finance~~.
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.

Members of the council shall serve without pay, but they may receive reimbursement for actual and necessary expenses incurred in the performance of their duties, if authorized by the director.

The council shall consult with the institute in matters of policy affecting the administration of this chapter and in the development of transportation in the state of North Dakota. The council shall meet at the call of the executive director or upon the written request of three or more members of the council.

SECTION 2. AMENDMENT. Section 54-53-03 of the North Dakota Century Code is amended and reenacted as follows:

54-53-03. Purpose - Powers and duties. The purpose of the institute must be to conduct and supervise research in the field of transportation and logistics in order to facilitate acquisition of a wider knowledge and understanding of marketing factors associated with the geographical location of the state of North Dakota and the upper great plains in the field of transportation and their influence on the socioeconomic systems of the state, region, and country. Research areas must include the study of commodity and other freight movements into and out of the state in order to better know and understand the various factors affecting the marketing of area products and services. The institute shall make public its findings and conclusions in regard thereto together with any suggested solutions. In the administration of its duties under this chapter, the institute shall consult and coordinate with various governmental and nongovernmental agencies, shipper and producer groups, and carriers, in this state and in other states, interested in the field of transportation.

Approved April 7, 2003
Filed April 7, 2003

CHAPTER 503

HOUSE BILL NO. 1043 (Legislative Council) (Information Technology Committee)

INFORMATION TECHNOLOGY POWERS AND DUTIES

AN ACT to create and enact two new subsections to section 54-59-05 of the North Dakota Century Code, relating to powers and duties of the information technology department; and to amend and reenact sections 54-35-15.1 and 54-59-02, subsection 4 of section 54-59-05, and sections 54-59-07, 54-59-11, and 54-59-14 of the North Dakota Century Code, relating to the information technology committee, information technology department responsibility, forms management, the state information technology advisory committee, the powers and duties of the information technology department, information technology plans, and the information technology operating account.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 54-35-15.1 of the North Dakota Century Code is amended and reenacted as follows:

54-35-15.1. Information technology committee - Appointment. The legislative council, during each biennium, shall appoint an information technology committee in the same manner as the council appoints other interim committees. The council shall appoint ~~four~~ six members of the house of representatives and ~~three~~ five members of the senate to the committee. The chief information officer of the state is an ex officio, nonvoting member of the committee. The council shall designate the chairman of the committee. The committee shall operate according to the statutes and procedure governing the operation of other legislative council interim committees.

SECTION 2. AMENDMENT. Section 54-59-02 of the North Dakota Century Code is amended and reenacted as follows:

54-59-02. Information technology department - Responsibility. The information technology department is established with the responsibility for all wide area network services planning, selection, and implementation for all state agencies, including institutions under the control of the board of higher education, counties, cities, and school districts in this state. With respect to a county, city, or school district, wide area network services are those services necessary to transmit voice, data, or video outside the county, city, or school district. In exercising its powers and duties, the department is responsible for computer support services, host software development, statewide communications services, standards for providing information to other state agencies and the public through the internet, technology planning, process redesign, and quality assurance. The department may not exercise its powers and duties in a manner that competes or otherwise interferes with the provision of telecommunications service to a private, charitable, or nonprofit entity by a privately or cooperatively owned telecommunications company.

²²⁹ **SECTION 3. AMENDMENT.** Subsection 4 of section 54-59-05 of the North Dakota Century Code is amended and reenacted as follows:

4. May purchase, finance the purchase, or lease equipment ~~or~~, 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 three 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 before executing a financing agreement. If the budget section 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 for equipment. Each executive branch agency or institution, except 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.

²³⁰ **SECTION 4.** Two new subsections to section 54-59-05 of the North Dakota Century Code are created and enacted as follows:

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.

Shall assure proper measures for security, firewalls, and internet protocol addressing at the state's interface with other facilities.

²²⁹ Section 54-59-05 was also amended by section 24 of House Bill No. 1019, chapter 18, and section 4 of House Bill No. 1043, chapter 503.

²³⁰ Section 54-59-05 was also amended by section 24 of House Bill No. 1019, chapter 18, and section 3 of House Bill No. 1043, chapter 503.

SECTION 5. 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 ~~or the officer's designee, who is a nonvoting member;~~ the director of the department of commerce ~~division of economic development and finance or the director's designee;~~ the commissioner of higher education or the commissioner's designee; ~~the chairman of the information technology council of North Dakota or a designee;~~ the director of the North Dakota workforce development council or a designee; ~~the chairman of the educational technology council or a designee;~~ and ~~eight~~ 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. ~~Except for the commissioner of higher education and the representatives of state agencies who receive compensation for their duties as state officers or employees, members~~ The members of the committee ~~are 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 their 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, ~~including providing electronic government services for citizens and businesses, developing technology infrastructure to support economic development and workforce training, and developing other~~ budgeting, services of the information technology department, and statewide information technology initiatives and policy.

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 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 ~~March~~ 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 ~~March~~ 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 legislative council or its designee. The statewide information technology plan must be developed with emphasis on long-term strategic goals and objectives.

SECTION 7. AMENDMENT. Section 54-59-14 of the North Dakota Century Code is amended and reenacted as follows:

54-59-14. Information technology operating account. The department shall establish a state information technology operating account in the state treasury to be used, in accordance with legislative appropriation, for procuring and maintaining information technology; ~~and network services; and central microfilm unit equipment and supplies,~~ and for providing information technology, network services, and central microfilm unit services to state entities and network services to users of the state network. Unless exempted by law, each agency or institution provided with information technology or network services shall pay to the department the charges as determined by the department. The department shall deposit the amounts received in the information technology operating account or the information technology development account, as appropriate.

Approved April 16, 2003
Filed April 17, 2003

CHAPTER 504**HOUSE BILL NO. 1444**
(Representatives Kroeber, Delmore)**EDUCATIONAL TECHNOLOGY COUNCIL
MEMBERSHIP**

AN ACT to amend and reenact subsection 2 of section 54-59-17 of the North Dakota Century Code, relating to the membership of the educational technology council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³¹ **SECTION 1. AMENDMENT.** Subsection 2 of section 54-59-17 of the North Dakota Century Code is amended and reenacted as follows:

2. The educational technology council consists of:
 - a. The chief information officer.
 - b. The superintendent of public instruction or the superintendent's designee.
 - c. The commissioner of higher education or the commissioner's designee.
 - d. A representative appointed by the state board for vocational and technical education.
 - e. A representative appointed by the governor from a list of three nominees submitted by the North Dakota association of technology leaders.
 - f. A representative appointed by the governor from a list of three nominees submitted by the North Dakota council of educational leaders.
 - g. A representative appointed by the governor from a list of three nominees submitted by the North Dakota school boards association.
 - h. A representative appointed by the governor from a list of three nominees submitted by the North Dakota association of special education directors.
 - i. Two representatives of school districts, one of which A school district representative who is appointed by the governor and who

²³¹ Section 54-59-17 was also amended by section 96 of House Bill No. 1183, chapter 138.

represents a school district that has an enrollment in kindergarten through grade twelve of fewer than four hundred, appointed by the governor.

- j. A school district representative who is appointed by the governor, who is licensed to teach by the educational standards and practices board, and who is employed by a public school district in this state as a classroom teacher.
- k. The director of technology for the department of public instruction.
- ~~k.~~ l. A representative appointed by the governor from a list of three nominees submitted by the state association of non public schools.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 505**HOUSE BILL NO. 1252**

(Representatives Delmore, DeKrey, Kretschmar, Meier)
(Senators Lyson, Traynor)

ITD EMPLOYEE SECURITY CHECKS

AN ACT to create and enact a new section to chapter 54-59 of the North Dakota Century Code, relating to security background checks of certain employees of the information technology department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

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 be fingerprinted. The chief information officer shall ensure that the fingerprints are submitted to the bureau of criminal investigation and the federal bureau of investigation for verification of the identity of the individuals and to obtain records of criminal arrests and convictions.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 506

SENATE BILL NO. 2041 (Legislative Council) (Information Technology Committee)

CRIMINAL JUSTICE INFORMATION SHARING BOARD

AN ACT to provide for a criminal justice information sharing board; and to amend and reenact sections 12-60-16.2 and 12-60-16.9 of the North Dakota Century Code, relating to the collection of criminal information and fees for criminal history record checks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Criminal justice information sharing board - Membership - Duties and powers. 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 shall provide staff support to the board. 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.

SECTION 2. AMENDMENT. Section 12-60-16.2 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.2. Criminal history record information - Reportable events. Except as otherwise provided in sections 12-60-16.1 through 12-60-16.10, each criminal justice agency shall report to the bureau the information described in this section for each felony and reportable offense so designated pursuant to section 12-60-16.4. The bureau may require the criminal justice agency to provide the information in a manner that the bureau determines to be the most efficient or accurate means of collection. The following criminal justice agencies shall perform the duties indicated:

1. Except as otherwise provided in this subsection, each criminal justice agency that makes an arrest for a reportable offense shall, with respect to that offense and the person arrested, furnish to the bureau the fingerprints, charges, and descriptions of the person arrested. If the arrest is made by a criminal justice agency that is a state law enforcement agency, then, on request of the arresting agency, a sheriff or jail administrator shall take the fingerprints. The arresting agency shall then furnish the required information to the bureau. If a decision is made not to refer the arrest for prosecution, the criminal justice agency making that decision shall report the decision to the bureau. A criminal justice agency may make agreements with other criminal justice agencies for the purpose of furnishing to the bureau information required under this subsection.

2. The prosecuting attorney shall notify the bureau of all charges filed, including all those added after the filing of a criminal court case, and whether charges were not filed in criminal cases for which the bureau has a record of an arrest.
3. After the court pronounces sentence for a reportable offense, and if the person being sentenced has not been fingerprinted with respect to that case, the prosecuting attorney shall ask the court to order a law enforcement agency to fingerprint that person. If the court determines that the person being so sentenced has not previously been fingerprinted for the same case, the court shall order the fingerprints taken. The law enforcement agency shall forward the fingerprints to the bureau.
4. The prosecuting attorney having jurisdiction over a reportable offense shall furnish the bureau all final dispositions of criminal cases for which the bureau has a record of an arrest or a record of fingerprints reported under subsection 3. For each charge, this information must include at least the following:
 - a. Judgments of not guilty, judgments of guilty including the sentence pronounced by the court, discharges, and dismissals in the trial court;
 - b. Reviewing court orders filed with the clerk of the court which reverse or remand a reported conviction or which vacate or modify a sentence; and
 - c. Judgments terminating or revoking a sentence to probation and any resentencing after such a revocation.
5. The North Dakota state penitentiary, pardon clerk, parole board, and local correctional facility administrators shall furnish the bureau with all information concerning the receipt, escape, death, release, pardon, conditional pardon, reprieve, parole, commutation of sentence, or discharge of an individual who has been sentenced to that agency's custody for any reportable offense which is required to be collected, maintained, or disseminated by the bureau. In the case of an escape from custody or death while in custody, information concerning the receipt and escape or death must also be furnished.

SECTION 3. AMENDMENT. Section 12-60-16.9 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.9. Criminal history record information - Fee for record check.

The bureau shall impose a fee of ~~twenty~~ thirty dollars for each record check. The bureau shall waive the fee for any criminal justice agency or court, and shall impose a fee of three dollars for each record check for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of minors.

Approved April 14, 2003
Filed April 14, 2003

CHAPTER 507

SENATE BILL NO. 2393

(Senators Robinson, Grindberg, Nelson)
(Representatives Glassheim, Price)

WORKFORCE DEVELOPMENT DUTIES

AN ACT to create and enact a new section to chapter 54-60 of the North Dakota Century Code, relating to duties of the department of commerce division of workforce development; and to amend and reenact section 54-60-04 of the North Dakota Century Code, relating to duties of the North Dakota economic development foundation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 - Purpose 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 a chairman, vice chairman, and a secretary.
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 ~~purpose of the~~ foundation is to shall:
 - a. Provide the governor advice and counsel in selecting the commissioner;₂
 - b. Serve in an advisory role to the commissioner;₂
 - 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;₂

- d. Develop a strategic plan for the development of value-added agriculture in the state; ~~and~~.
- 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 2. A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

Division of workforce development - Duties. The division of workforce development shall actively monitor local, regional, and national private and public workforce development initiatives.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 508

HOUSE BILL NO. 1334

(Representatives Eckre, Skarphol, Thoreson)
(Senators Grindberg, Heitkamp, Wardner)

WORKERS' COMPENSATION DATA AND REPORTS

AN ACT to create and enact a new section to chapter 54-60 of the North Dakota Century Code, relating to commerce data; and to amend and reenact section 65-04-15 and subsection 4 of section 65-04-33 of the North Dakota Century Code, relating to reporting of employee and employer zip codes for commerce purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

Workers' compensation commerce data. The department shall publish in aggregate form employers' and employees' nine-digit zip codes provided to the bureau by employers.

²³² **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 reports confidential - Exceptions - Penalty if employee of bureau divulges information. The information contained in an employer's report 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 bureau in the discharge of its the bureau's official duties; and is not open to the public nor usable in any court in any court action or proceeding ~~pending therein~~ unless the bureau is a party ~~thereto~~ to that court action or proceeding. The information contained in an employer's report may be provided to a federal or state law enforcement agency pursuant to a lawful order of a court upon a showing of necessity and prior notice to the bureau of an application for the order. The information contained in the report, however, may be tabulated and published by the bureau in statistical form for the use and information of the state departments and of the public. Upon request, the bureau shall disclose the rate classification of an employer to the requester; however, the bureau may not disclose any information that would reveal the amount of payroll upon which that employer's premium is being paid or the amount of premium the employer is paying. At least annually, the bureau shall furnish the department of commerce with employers' and employees' nine-digit zip codes. 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 bureau.

²³² Section 65-04-15 was also amended by section 4 of House Bill No. 1149, chapter 564.

The bureau may, upon request of the state tax commissioner or the secretary of state, furnish to them a list ~~or lists~~ of employers showing only the names, addresses, and bureau file identification numbers of such employers as those files relate to this chapter; provided, that any such list so furnished must be used by the tax commissioner or the secretary of state only for the purpose of administering their duties. The bureau may provide the commissioner of labor or job service North Dakota with information obtained pursuant to the administration of this title. Any information so provided must be used only for the purpose of administering the duties of the commissioner of labor or job service North Dakota. Whenever the bureau obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties. The bureau may provide any state agency or a private entity with a list of names and addresses of employers for the purpose of jointly publishing or distributing publications or other information pursuant to section 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.

²³³ **SECTION 3. AMENDMENT.** Subsection 4 of section 65-04-33 of the North Dakota Century Code is amended and reenacted as follows:

4. An employer who fails or refuses to furnish to the bureau the annual payroll report and estimate or who fails or refuses to furnish other information required by the bureau under this chapter is subject to a penalty established by the bureau of two thousand dollars. Upon the request of the bureau, the employer shall furnish the bureau any of that employer's payroll records, annual payroll reports, employer's and employees' nine-digit zip codes, and other information required by the bureau under this chapter and an estimate of payroll for the advance premium year. If the employer fails or refuses to provide the records within thirty days of a written request from the bureau, the employer is subject to a penalty not to exceed one hundred dollars for each day until the bureau receives the records, in addition to the two thousand dollar penalty set forth above. The bureau may reduce penalties for employers under this subsection. However, an employer may not appeal a bureau decision not to reduce a penalty. The bureau shall notify an employer by regular mail of the amount of premium and penalty due the bureau from the employer. If the employer fails to pay that amount within thirty days, the bureau may collect the premium, penalties, and interest due by civil action. In that action, the court may not review or consider the action of the bureau regarding the acceptance or payment of a claim filed when the employer was uninsured. No exemptions except absolute exemptions under section 28-22-02 are allowed against any levy under executions pursuant to a judgment recovered in the action.

Approved March 25, 2003

Filed March 25, 2003

²³³ Section 65-04-33 was also amended by section 7 of House Bill No. 1149, chapter 564, and section 1 of Senate Bill No. 2309, chapter 566.

CHAPTER 509**SENATE BILL NO. 2030**

(Legislative Council)
(Commerce Committee)

INTERNET WEB SITE FOR CAREERS AND JOBS

AN ACT to create and enact a new section to chapter 54-60 of the North Dakota Century Code, relating to a department of commerce career guidance and job opportunities internet web site; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 54-60 of the North Dakota Century Code is created and enacted as follows:

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.

Approved May 2, 2003
Filed May 2, 2003

STATE HISTORICAL SOCIETY AND STATE PARKS

CHAPTER 510

SENATE BILL NO. 2416

(Senators Thane, Lindaas)

(Approved by the Delayed Bills Committee)

HISTORICAL SOCIETY PROJECTS AND BONDS

AN ACT to provide an appropriation for capital projects of the state historical society of North Dakota; to authorize the industrial commission to issue and sell bonds for capital projects; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. PROJECT AUTHORIZATIONS. The industrial commission, acting as the North Dakota building authority, shall arrange for the funding of the projects authorized in this section, hereby declared to be in the public interest, through the issuance of evidences of indebtedness under chapter 54-17.2, during the biennium beginning July 1, 2003, and ending June 30, 2005. The limitation provided in section 54-17.2-23 does not apply to repayments allocable to evidences of indebtedness issued pursuant to this section. The proceeds of the evidences of indebtedness and other available funds are hereby appropriated during the biennium beginning July 1, 2003, and ending June 30, 2005, for the following projects:

Chateau de Mores state historic site interpretive center	\$1,000,000
Fort Abercrombie state historic site interpretive center	\$1,000,000

The industrial commission shall issue evidences of indebtedness under this section with the condition that lease rental payments need not begin until July 1, 2005. The authority of the industrial commission to issue evidences of indebtedness ends June 30, 2005, but the industrial commission may continue to exercise all other powers granted to it under chapter 54-17.2 and this Act and to comply with any covenants entered into before that date.

Grand total special funds appropriation	\$2,000,000
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SECTION 2. BOND ISSUANCE REPAYMENT RESPONSIBILITY. Debt service on the evidences of indebtedness issued under the provisions of section 1 of this Act must be paid from federal, local, or donated funds collected by the state historical society.

SECTION 3. LEGISLATIVE INTENT - STATE HISTORICAL SOCIETY OF NORTH DAKOTA - INTERPRETIVE CENTERS EXPANSION. It is the intent of the fifty-eighth legislative assembly that \$600,000 of the required federal, local, or donated funds responsibility as provided in section 2 of this Act, \$300,000 for each interpretive center, must be collected before the state historical society may begin the expansion of the interpretive centers.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved May 2, 2003

Filed May 2, 2003

CHAPTER 511

SENATE BILL NO. 2249

(Senators J. Lee, Cook, Polovitz)
(Representatives DeKrey, Porter, Warner)

HISTORICAL AND ARCHAEOLOGICAL SITE PROTECTION

AN ACT to create and enact a new section to chapter 55-02 of the North Dakota Century Code, relating to protection of historical sites; to amend and reenact section 55-02-07 and subsection 2 of section 55-10-08 of the North Dakota Century Code, relating to the powers of the state historical board; to provide for a legislative council study of the protection of historical or archaeological artifacts or sites; to provide for application; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-02-07 of the North Dakota Century Code is amended and reenacted as follows:

55-02-07. Protection of historical or archaeological artifacts or sites.

Any historical or archaeological artifact or site that is found or located upon any land owned by the state or its political subdivisions or otherwise comes into its custody or possession and which is, in the opinion of the director of the state historical society, significant in understanding and interpreting the history and prehistory of the state, may not be destroyed, defaced, altered, removed, or otherwise disposed of in any manner without the approval of the state historical board, unless section 2 of this Act applies to the site. Notification of the director's opinion of significance must be communicated to the appropriate governing official. The state historical board through the director ~~shall~~, within sixty days of written notification to it by the appropriate governing official of the state or political subdivision's desire, need, or intent to destroy, alter, remove, or otherwise dispose of a significant artifact or site, shall provide the governing official written direction for the care, protection, excavation, storage, destruction, or other disposition of the significant artifact or site. The state and its political subdivisions shall cooperate with the director in identifying and implementing any reasonable alternative to destruction or alteration of any historical or archaeological artifact or site significant in understanding and interpreting the history and prehistory of the state before the state historical board may approve the demolition or alteration.

²³⁴ **SECTION 2.** A new section to chapter 55-02 of the North Dakota Century Code is created and enacted as follows:

Protection of public health and safety on sites having a public function.

Notwithstanding any other provision of law, if the state or a political subdivision has a property interest in real property and that property has an existing public function in addition to any historical site registration or historical significance determination, the

²³⁴ Section 55-02-07.2 was also amended by section 25 of Senate Bill No. 2015, chapter 36.

governing body of the agency or political subdivision owning the property interest may, subject to the following provisions, improve, alter, modify, or destroy that property if the agency or governing body determines that action is necessary to protect public health or safety, to provide access for disabled persons, or to ensure structural integrity. If an action is to be taken by an agency or governing body under this section, notice of intent to take the action must be given to the director at the onset of the planning process. At the director's request, the agency or governing body shall inform the director of each meeting at which planning or decisions on a project are on the agenda. At each meeting, the agency or governing body shall provide the director with an opportunity to comment or provide preservation funding for the proposed project and the agency or governing body shall consider the director's comments or offers of funding in the development and implementation of the project. If the agency or governing body and the director do not agree on the action to be taken, the differences must be submitted to a mediator selected by the governor to facilitate a consensus between the parties. The cost of the mediator must be shared equally by the parties. The mediator shall issue a report within sixty days of appointment by the governor. The report of the mediator must be published once in the official newspaper of the state and political subdivision. Although the agency or governing body may take the action it deems necessary, the agency or governing body shall make all reasonable effort to preserve the historical characteristics of a site taking into consideration economic and technical feasibility. The decision of the agency or governing body must be published once in the official newspaper of the state and political subdivision. After mediation, if any, if the governing body of a political subdivision determines to proceed with actions that will result in completely demolishing, removing, or significantly degrading the historical characteristics of a building or real property, a resident of the political subdivision where the building or real property is located may submit a written notice to the county auditor of intention to petition for a public vote. The notice must be filed with the county auditor within fourteen days of the publication of the decision of the governing body. A petition for a public vote must contain the names of at least ten percent of the qualified electors from that governing body's jurisdiction who voted in the last general election and must be filed with the county auditor within one hundred twenty days of the governing body's publication of notice of its final action. If a petition is filed, the matter must be submitted for a vote of the qualified electors at the next special, primary, or general election held in that jurisdiction. All actions to remove, demolish, or significantly degrade the historical characteristics of a building or real property are stayed for fourteen days after the governing body's publication of notice of its final action, and if notice of intention to seek a public vote is filed, actions are stayed until either the petition fails or the public vote is held. If the political subdivision is a home rule jurisdiction with its own referendum procedures, however, the home rule referendum procedures apply to the action of the governing body.

SECTION 3. AMENDMENT. Subsection 2 of section 55-10-08 of the North Dakota Century Code is amended and reenacted as follows:

2. The state or a political subdivision may not demolish or cause to alter the physical features or historic character of any site listed in the state historic sites registry as a state historic site without first obtaining the prior approval from the director of the state historical society upon authorization of the state historical board, unless section 2 of this Act applies to the site. The state and political subdivisions shall cooperate with the director of the state historical society in identifying and implementing any reasonable alternative to demolition or alteration of any state historic site before the board approves the demolition or alteration.

SECTION 4. LEGISLATIVE COUNCIL STUDY OF THE PROTECTION OF HISTORICAL OR ARCHAEOLOGICAL ARTIFACTS OR SITES. The legislative council shall consider studying, during the 2003-04 interim, issues relating to the protection of historical or archaeological artifacts or sites that are found or located upon land owned by the state or its political subdivisions or otherwise come into the custody or possession of the state or its political subdivisions and the role of the director of the state historical society of North Dakota in the protection of historical or archaeological artifacts or sites. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 5. APPLICATION OF ACT. This Act applies to any proceeding or determination not finalized before the effective date of this Act.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 24, 2003

Filed April 24, 2003

CHAPTER 512

HOUSE BILL NO. 1416

(Representatives R. Kelsch, Carlisle, Martinson)
(Senators Cook, Krauter, Nething)

STATE PARKS ALCOHOL SALES

AN ACT to amend and reenact section 55-08-05 of the North Dakota Century Code, relating to alcoholic beverage sales on state parks and recreation department property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 55-08-05 of the North Dakota Century Code is amended and reenacted as follows:

55-08-05. Charges for services. The director ~~is hereby authorized to~~ may provide special services within state parks, state campgrounds, state recreation areas, and reserves; provide special technical assistance services; and ~~to~~ make rules ~~and regulations~~ for the use of ~~such those~~ services. The director shall establish and cause to be collected charges, fees, and rentals for the use of all ~~such~~ special services, and shall revise the same, when necessary, in ~~such the~~ manner that the revenue derived ~~therefrom~~ will be sufficient to pay the cost of providing each ~~such~~ service and to pay the principal of and interest on all bonds issued for projects furnishing the facilities for ~~any such the~~ services, and to maintain a reserve for the security of ~~said the bonds as herein provided~~. The director may waive the collection of charges, fees, and rentals for the use of ~~all such~~ special services by health care-related charitable organizations conducting group camp activities without charge to participants. However, the director shall waive the collection of charges, fees, and rentals for the use of all special services by any care-related charitable organization sponsoring or conducting summer group camp activities without charge for fourteen days for children from age eight through age fourteen who have diabetes. Nothing in this section requires the director to provide camp services if the camp facilities are otherwise closed due to adverse administrative or fiscal impacts upon the department. Specifically, ~~but without limitation of said general authorization,~~ the director may:

1. Provide special parking space for automobiles or other motor-driven vehicles in any state park or state recreation area.
2. Provide special parking spurs and campgrounds for automobiles and sites for tent camping and special auto trailer coach parking spaces for the use of the individual charged for ~~such the~~ space according to the daily rate which must be determined and fixed by the director consistent with the type of facility provided for the accommodation of visitors in any particular park and with similar facilities offered for tourist camping in the area.
3. Charge a fee for entrance to any pageant grounds ~~which may be~~ created in any state park, state recreation area, or reserve for the purpose of having historical or other pageants conducted by the agent of any authorized agency.

4. Provide water, sewer, and electric service to trailer or tent campsites and buildings and structures included in projects authorized by the legislative assembly.
5. Provide facilities for the sale to the public of food, nonintoxicating beverages, except beer and wine sales as provided in ~~subsection~~ subsections 6 and 7, and other merchandise and personal services of a suitable nature, and make buildings, structures, and other recreational facilities available for use and occupancy by the public, or contract for the lease of ~~any such~~ the buildings, structures, and facilities to a concessionaire to be operated on ~~such~~ the terms and compensation basis as the director determines to be in the best interest of the state. A bond must be required of each concessionaire in ~~such~~ the amount ~~as~~ the director determines, conditioned upon the faithful performance of all duties under the lease and proper accounting for all funds.
6. Allow the sale of beer and wine by concessionaires on property leased to the department by the United States department of the army, corps of engineers, ~~provided if~~ the concessionaire also obtains the appropriate local and state licenses required by section 5-02-01.
7. Allow the sale of on-sale beer and wine by operating, liquor-licensed concessionaires for fourteen events per year on property under the management of the director which borders the Missouri river and which is within fifteen miles [24.14 kilometers] of a city with a population in excess of twenty thousand, if the concessionaire also obtains the appropriate local and state licenses required by section 5-02-01.
8. Charge and collect motor vehicle permit fees in the amounts prescribed by the legislative assembly, which fees are and must be imposed for the sole purposes of paying capital costs of projects required to provide the special services herein described and referred to, and of meeting the principal and interest and reserve requirements of bonds issued to finance such projects.
- ~~8.~~ 9. Charge a fee for providing special technical assistance to groups requesting information from the natural heritage inventory data base.

Approved April 9, 2003

Filed April 9, 2003

TAXATION

CHAPTER 513

SENATE BILL NO. 2350

(Senators Holmberg, Christenson, Espegard)
(Representatives Delmore, Svedjan, Warnke)

STATE PROPERTY UNDER LEASE TAX STATUS

AN ACT to amend and reenact section 57-02-26 of the North Dakota Century Code, relating to assessment of property taxes on certain state property held under a lease; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁵ **SECTION 1. AMENDMENT.** Section 57-02-26 of the North Dakota Century Code is amended and reenacted as follows:

57-02-26. Certain property taxable to lessee or equitable owner - Exception.

1. Property held under a lease for a term of years, or under a contract for the purchase thereof, belonging to the United States or to the state or a political subdivision thereof, except such lands as have been leased for pasture or grazing purposes or upon which the state makes payments in lieu of property taxes, or to any religious, scientific, or benevolent society or institution, whether incorporated or unincorporated, or to any railroad corporation whose property is not taxed in the same manner as other property, must be considered, for all purposes of taxation, as the property of the person so holding the same.
2. Property held under an easement or a lease for a term of years and any improvements upon that property which are used for any purpose relating to discovery, exploration, processing, or transportation of oil or gas must be considered the property of the lease or easement holder. For the purposes of this subsection, "improvements" does not include property subject to the provisions of chapter 57-06 or property subject to the in lieu of ad valorem tax provisions of chapter 57-51.
3. Property owned by the state and held under a lease and any structure, fixture, or improvement located on that property is not taxable to the leaseholder if the structure, fixture, or improvement is used primarily for athletic and educational purposes at any state institution of higher education.

²³⁵ Section 57-02-26 was also amended by section 36 of Senate Bill No. 2046, chapter 48.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

Approved April 11, 2003

Filed April 14, 2003

CHAPTER 514

SENATE BILL NO. 2390

(Senators O'Connell, Nichols)
(Representatives Herbel, D. Johnson, Solberg)

CAPITALIZATION RATE FOR AGRICULTURAL VALUATION

AN ACT to amend and reenact subsection 4 of section 57-02-27.2 of the North Dakota Century Code, relating to the capitalization rate for valuation of agricultural property for property tax purposes; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 57-02-27.2 of the North Dakota Century Code is amended and reenacted as follows:

4. To find the "capitalized average annual gross return", the average annual gross return must be capitalized by a rate that is a ten-year average of the gross ~~federal land bank~~ agribank mortgage rate of interest for North Dakota, but the rate used for capitalization under this section may not be less than nine and one-half percent. The ten-year average must be computed from the twelve years ending with the most recent year used under subdivision a of subsection 3, discarding the highest and lowest years, and the gross ~~federal land bank~~ agribank mortgage rate of interest for each year must be determined in the manner provided in section 20.2032A-4(e)(1) of the United States treasury department regulations for valuing farm real property for federal estate tax purposes, except that the interest rate may not be adjusted as provided in paragraph (e)(2) of section 20.2032A-4.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

Approved March 25, 2003
Filed March 26, 2003

CHAPTER 515

HOUSE BILL NO. 1348 (Representatives M. Klein, Carlson) (Senators Mutch, Urlacher)

ELECTRIC TRANSMISSION LINE MILEAGE TAX

AN ACT to create and enact a new subsection to section 57-06-02 and a new section to chapter 57-06 of the North Dakota Century Code, relating to property tax exemption for new or expanded capacity electric transmission lines; to amend and reenact subsection 2 of section 57-33.1-02 of the North Dakota Century Code, relating to application of the electric transmission lines mileage tax for cooperatives; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-06-02 of the North Dakota Century Code is created and enacted as follows:

"Transmission line" means a line to transmit electrical energy which operates at a voltage of forty-one and six-tenths kilovolts or more but does not include a line owned or operated by an agency or instrumentality of the United States government.

SECTION 2. A new section to chapter 57-06 of the North Dakota Century Code is created and enacted as follows:

New transmission line property tax exemption. A transmission line of two hundred thirty kilovolts or larger, and its associated transmission substations, which is initially placed in service on or after October 1, 2002, is exempt from property taxes for the first taxable year after the line is initially placed in service, and property taxes as otherwise determined by law on the transmission line and its associated transmission substations must be reduced by:

1. Seventy-five percent for the second taxable year of operation of the transmission line.
2. Fifty percent for the third taxable year of operation of the transmission line.
3. Twenty-five percent for the fourth taxable year of operation of the transmission line.

After the fourth taxable year of operation of the transmission line, the transmission line and its associated transmission substations are exempt from property taxes and are subject to a tax at the rate of three hundred dollars per mile [1.61 kilometers] or fraction thereof of the line located in this state. The per mile tax imposed by this section applies to the transmission line and its associated transmission substations and is subject to the same manner of imposition and allocation as the tax imposed by subsection 2 of section 57-33.1-02.

For purposes of this section, "initially placed in service" includes both new construction and substantial expansion of the carrying capacity of a preexisting line,

and "substantial expansion" means an increase in carrying capacity of fifty percent or more.

SECTION 3. AMENDMENT. Subsection 2 of section 57-33.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. In addition to the tax imposed under subsection 1, the commissioner shall levy a tax upon transmission lines of two hundred thirty kilovolts or larger, owned by cooperatives subject to the provisions of this chapter and chapter 57-60 and carrying electrical energy the gross receipts or production of which have been subjected to the tax imposed by subsection 1 of this section or subsections 2 and 3 of section 57-60-02, at the rate of two hundred twenty-five dollars per mile [1.61 kilometers] or fraction thereof of such lines located in this state, except that the rate of tax under this subsection for a transmission line of two hundred thirty kilovolts or larger which is initially placed in service on or after October 1, 2002, is three hundred dollars per mile [1.61 kilometers] or fraction thereof of such lines located in this state. The tax imposed under this subsection does not apply to a transmission line initially placed in service on or after October 1, 2002, for the first taxable year after the line is initially placed in service, and the tax imposed under this subsection on a transmission line initially placed in service on or after October 1, 2002, must be reduced by:
 - a. Seventy-five percent for the second taxable year of operation of the transmission line.
 - b. Fifty percent for the third taxable year of operation of the transmission line.
 - c. Twenty-five percent for the fourth taxable year of operation of the transmission line.

The tax imposed by this subsection is in lieu of any property tax on such lines and any substation used in delivering electrical energy, the gross receipts or production of which have been subjected to the tax imposed by subsection 1 or subsections 2 and 3 of section 57-60-02. The proceeds derived from the taxing of transmission lines must be allocated to each county in which such transmission lines are located in the proportion that the miles [kilometers] of such lines in a county bear to the total miles [kilometers] of such transmission lines located within this state. Revenues received by each county must be deposited in the county general fund.

For purposes of this subsection, "initially placed in service" includes both new construction and substantial expansion of the carrying capacity of a preexisting line, and "substantial expansion" means an increase in carrying capacity of fifty percent or more.

SECTION 4. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 516

HOUSE BILL NO. 1024

(Legislative Council)

(Advisory Commission on Intergovernmental Relations)

COUNTY MILL LEVY CONSOLIDATION

AN ACT to create and enact a new section to chapter 57-15 of the North Dakota Century Code, relating to optional consolidation of county mill levies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-15 of the North Dakota Century Code is created and enacted as follows:

Optional consolidation of county mill levies.

1. In lieu of determining its general fund levy limitation under section 57-15-01.1 or 57-15-06, a county may determine its general fund levy authority as provided in this section. A county may consolidate the levies provided for under sections 4-02-26, 4-02-27, 4-02-27.1, 4-02-27.2, 4-02-37, 4-08-15, 4-08-15.1, 4-16-02, 4-33-11, 11-11-24, 11-11-53, 11-11-60, 11-11-65, 11-11.1-06, 11-28-06, 18-07-01, 24-05-01, 32-12.1-08, 40-38-02, 40-57.2-04, 49-17.2-21, 52-09-08, 57-15-06.4, 57-15-06.5, 57-15-06.6, 57-15-06.9, 57-15-10.1, 57-15-27.2, 57-15-54, 57-15-59, 57-47-04, 61-04.1-26, and 63-01.1-06 with its general fund levy under section 57-15-06 to provide for a county general fund levy which may not exceed one hundred thirty-four mills on the dollar of taxable valuation of the county. A county that elects to determine its general fund levy authority under this section may not impose separate levies under the sections listed in this subsection and may not increase the number of mills levied in any one year over the number levied in the previous year by more than the increase in the consumer price index for all urban consumers, all items, United States city average, as completed by the United States department of labor, bureau of labor statistics.
2. The consolidation of mill levies under subsection 1 may be accomplished by resolution of the board of county commissioners, subject to the right of referendum by the county electors. The board of county commissioners may by majority vote adopt a preliminary resolution providing for the consolidated levy. The board shall publish the preliminary resolution in the official newspaper of the county, at least once during two different weeks within the thirty-day period immediately following the adoption of the preliminary resolution. The board of county commissioners shall hold at least one public hearing and receive comments regarding the consolidation of mill levies. The preliminary resolution may be referred to the qualified electors of the county by a petition protesting the consolidation. The petition must be signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election, and filed with the county auditor before four p.m. on the ninetieth day after the preliminary resolution is adopted. If the petition contains the signatures

of a sufficient number of qualified electors, the board of county commissioners shall rescind the preliminary resolution or submit the resolution to a vote of the qualified electors of the county at the next regular election or at a special election called by the board of county commissioners to address the question. If a majority of the qualified electors voting on the question approve the resolution, the consolidation becomes effective for the next tax year and subsequent tax years. If a petition protesting the consolidation is not submitted within ninety days, the board of county commissioners shall consider the comments received regarding the consolidation and either adopt a final resolution implementing the consolidation or rescind the preliminary resolution. The consolidation of mill levies may be reversed by resolution of the board of county commissioners following the same procedure provided for implementation of the consolidation or by a majority vote of the qualified electors of the county voting on the question pursuant to submission of a petition to reverse the consolidation signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election.

3. A contractual obligation entered by a county with respect to a dedicated mill levy may not be impaired as a result of consolidation of levies under this section.

Approved April 4, 2003
Filed April 7, 2003

CHAPTER 517

HOUSE BILL NO. 1058

(Representatives Eckre, Williams, Kretschmar)
(Senators Thane, Heitkamp, Cook)

RELEVY OF OMITTED PROPERTY TAXES

AN ACT to amend and reenact section 57-15-63 of the North Dakota Century Code, relating to relevy by a taxing 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. AMENDMENT. Section 57-15-63 of the North Dakota Century Code is amended and reenacted as follows:

57-15-63. (Effective through December 31, ~~2005~~ 2008) Mistake in levy - Levy increase the following in later year - Levy reverts.

1. Notwithstanding sections 57-15-01.1 and 57-15-14, if a mistake occurred in the ~~2000~~ 2001 tax year which would result in ~~ten~~ seven percent or more of the amount a taxing district intended to be levied, as of the October tenth deadline under section 57-15-31.1, not being levied and the mistake is brought to the attention of the county auditor or county treasurer of any county with land in the taxing district by February 1, ~~2004~~ 2002, the taxing district may include ~~half of~~ the amount which was mistakenly not levied in the taxing district's budget and general fund levy for ~~the 2004~~ a single tax year, ~~and the other half that was mistakenly not levied in the taxing district's budget and general fund for the 2002 tax year or spread among one or more tax years, in tax years 2004 through 2008.~~
2. If the resulting general fund levy for the ~~2004 or 2002~~ tax year is above one hundred eighty-five mills, the taxing district need not comply with chapter 57-16.
3. After ~~the 2002~~ 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 for ~~the 1999 tax year~~ 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. ~~The 2004 and 2002~~ Before any taxable years year may not be used as a "base year" under section 57-15-01.1 and may not be considered or a "prior school year" under section 57-15-14, any amount included in that taxable year's levy under this section must be deducted.
5. A taxing district that used this section to determine its general fund levy for 2001 or 2002 may use the amount it intended to levy in the 2000 tax year as its "base year" under section 57-15-01.1 or as its "prior school year" under section 57-15-14.

SECTION 2. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for taxable years beginning after December 31, 2002, and before December 31, 2008, and is thereafter ineffective.

Approved April 9, 2003

Filed April 9, 2003

CHAPTER 518**HOUSE BILL NO. 1338**

(Representatives Thoreson, Carlisle, Iverson)
(Senators Mathern, Schobinger)

PROPERTY TAX ABATEMENT PENALTY REFUNDS

AN ACT to amend and reenact sections 57-20-22, 57-23-08, 57-23-09, and 57-55-12 of the North Dakota Century Code, relating to refund of penalties and interest on any abated property taxes or mobile home taxes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-20-22 of the North Dakota Century Code is amended and reenacted as follows:

57-20-22. Disposition of penalty and interest. All penalties on general taxes and interest on certificates of sale issued, or deemed to be issued to the county, or tax liens against the property belong to the county and become a part of the general fund or of ~~such~~ any other fund as the county commissioners may direct, except penalties and interest collected on ~~the following items:~~

- 1- ~~Taxes~~ taxes and parts of taxes due to townships, cities, school districts, and park districts; and
- 2- ~~Special~~ on special assessments for public improvements, which must be paid to the municipality levying the same, or whatever other taxing district or agency thereof is entitled to the original amount of ~~such~~ the taxes or assessments.

SECTION 2. AMENDMENT. Section 57-23-08 of the North Dakota Century Code is amended and reenacted as follows:

57-23-08. Duties of county auditor and county commissioners after abatement action. After the granting of any application for abatement or refund or compromise of any tax, the county auditor shall correct all tax lists in accordance with the order of abatement or compromise, and the applicant is relieved of further liability for the tax abated or compromised and any penalties and interest on the abated or compromised portion of the tax. If the board of county commissioners disapproves any application for abatement or refund or compromise, in whole or in part, the reasons for disapproval must be stated thereon, and the applicant may appeal the rejection of the application for abatement or refund or compromise as provided by law.

SECTION 3. AMENDMENT. Section 57-23-09 of the North Dakota Century Code is amended and reenacted as follows:

57-23-09. Procedure when refund is made. When any application for refund is granted, the county auditor shall issue and deliver to the applicant a warrant drawn on the county treasurer for the amount ordered refunded, and the county treasurer shall refund the same, and shall write opposite such tax in the treasurer's list the word "refund", with the date and the number of the warrant. The amount so refunded must be charged to the state, county, city, township, school district, ~~or~~ park

district, or any other taxing district, which may have received any part of such money, in proportion to the levies for the year for which the tax was extended. The refund must include any penalties and interest previously paid on the portion of any tax abated or compromised.

SECTION 4. AMENDMENT. Section 57-55-12 of the North Dakota Century Code is amended and reenacted as follows:

57-55-12. Refunds.

1. The owner of any mobile home who has paid, through mistake or otherwise, a greater amount of tax or penalty and interest than was justly due may apply for an abatement or refund under chapter 57-23 and a refund of the unjust portion paid. The county auditor and treasurer shall charge all refunds against the taxing districts to which the collection was credited.
2. If the owner of a mobile home has paid the full amount of taxes due under this chapter and thereafter during the current year such mobile home has been demolished or destroyed beyond repair by fire, windstorm, or flood, the owner is entitled to a refund under subsection 1.

Approved March 25, 2003

Filed March 25, 2003

CHAPTER 519**SENATE BILL NO. 2400**

(Senator Christmann)

(Representatives Headland, Wrangham)

EASEMENT SURVIVAL AFTER TAX FORECLOSURE

AN ACT to amend and reenact subsection 2 of section 57-28-04 and sections 57-28-08 and 57-28-09 of the North Dakota Century Code, relating to survival of an easement or right of way on property upon acquisition by the county through tax foreclosure.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-28-04 of the North Dakota Century Code is amended and reenacted as follows:

2. By March first, the county auditor shall request from the recorder and the clerk of the district court a certified list giving the names and addresses of all persons who appear to be interested as owners, mortgagees, lienholders, or otherwise in the property except a person whose only interest is in an easement or right of way recorded, or a mineral interest that was severed from the surface estate, before filing of any unsatisfied lien or mortgage or before January first of the year following the year for which the taxes were levied and to which the tax lien relates, upon whom the notice of foreclosures must be served. The recorder and the clerk of the district court shall provide the county auditor with the requested lists by April fifteenth following the request.

SECTION 2. AMENDMENT. Section 57-28-08 of the North Dakota Century Code is amended and reenacted as follows:

57-28-08. Effect of failure to satisfy tax lien. The failure of the owner, any mortgagee, or other lienholder to satisfy the tax lien before the date of foreclosure shall:

1. Pass any interest of the owner, mortgagee, or lienholder in the property to the county. The interest acquired by the county is subject ~~only~~ to the lien for installments of special assessments certified to the county auditor or which may become due after the service of the notice of foreclosure of tax lien. The interest acquired by the county is subject to an easement or right of way recorded with an effective date that precedes the date of official notice to the record titleholder which states that property taxes are delinquent and constitute a property lien.
2. Foreclose all rights of satisfaction.
3. Waive all errors, irregularities, or omissions which do not affect the substantial rights of the parties, except jurisdictional defects.

SECTION 3. AMENDMENT. Section 57-28-09 of the North Dakota Century Code is amended and reenacted as follows:

57-28-09. Tax deed to be issued. After the date of foreclosure for property with an unsatisfied tax lien, the county auditor shall issue a tax deed to the county or, in cases in which the state engineer has made an assessment against the property under section 61-03-21.3, the county auditor shall issue a tax deed to the state or, if the property was sold by another political subdivision of this state within the ten years preceding the foreclosure, the county auditor shall issue a tax deed to that political subdivision. The tax deed passes the property in fee to the county, the state, or political subdivision, free from all encumbrances except installments of special assessments certified to the county auditor or which may become due after the service of the notice of foreclosure of tax lien ~~and except for~~, a homestead credit for special assessments lien provided for in section 57-02-08.3, and an easement or right of way recorded with an effective date that precedes the date of official notice to the record titleholder which states that property taxes are delinquent and constitute a property lien. While the county, the state, or political subdivision holds title under a tax deed, it is not liable for the payment of any installments of special assessments which become due unless the board of county commissioners, the state, or political subdivision has leased or contracted to sell the property. A deed issued under this section is prima facie evidence of the truth and regularity of all facts and proceedings before the execution of the deed.

Approved March 19, 2003
Filed March 19, 2003

CHAPTER 520**HOUSE BILL NO. 1492**

(Representatives Monson, Froelich, D. Johnson, Nelson)
(Senators Nichols, Trenbeath)

TAX SALE BIDDER DISQUALIFICATION

AN ACT to create and enact a new section to chapter 57-28 of the North Dakota Century Code, relating to filing of tax delinquencies in the central notice system; and to amend and reenact subsection 1 of section 54-09-09 and section 57-28-15 of the North Dakota Century Code, relating to bidders at annual sales of land acquired by tax deeds and tax delinquency filings in the central notice system.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-09-09 of the North Dakota Century Code is amended and reenacted as follows:

1. The secretary of state shall maintain a computerized central indexing system that contains the information filed with the office of the secretary of state or with any of the offices of the recorder in this state pursuant to sections 35-13-02, 35-17-04, 35-20-16, 35-30-02, 35-31-02, 35-34-04, 35-34-06, 41-09-72, section 3 of this Act, 57-38-49, 57-39.2-13, 57-40.2-16, 57-40.3-07.1, 57-43.1-17.4, 57-43.2-16.3, and 57-51-11. The system must connect each recorder's office to the secretary of state's office through the information technology department. The system must allow access to financing statement information by equipment that conforms to requirements determined by the information technology department. The system must have safeguards to allow access to information that is in the system relating to security interests or liens and to prevent unauthorized alteration or deletion of that information and to allow access to other information in the system as prescribed by the secretary of state.

SECTION 2. AMENDMENT. Section 57-28-15 of the North Dakota Century Code is amended and reenacted as follows:

57-28-15. Annual sale at auction - Sale price - Terms of payment. The annual sale must be conducted in the following manner:

1. Each parcel of land must be sold at auction to the highest qualified bidder for no less than the minimum sale price as fixed before the sale. The sale may be made either for cash or one-fourth of the purchase price in cash, and the balance in equal annual installments over a period of not more than ten years. The purchaser may pay any or all annual installments with interest before the agreed due date of the installments.
2. If the sale is for cash, the purchaser shall promptly pay the amount bid to the county treasurer.

3. If the purchase price is to be paid in installments, the purchaser shall pay the first installment to the county treasurer and be given a contract for deed setting forth the terms of the sale. The contract for deed must be executed by the purchaser, the chairman of the board of county commissioners, and the county auditor. The contract must be in a form prescribed by the state tax commissioner. The contract must give the county the right to cancel the contract by resolution and due notice upon default by the purchaser.
4. The original contract for deed must be filed with the county treasurer, who shall record upon it all payments made by the purchaser. The interest rate for the contract must be established by the board of county commissioners at no more than twelve percent.
5. Upon completion of a cash sale or payments under a contract for deed, the county auditor shall execute and deliver a deed conveying to the purchaser the entire interest of the county in the property.
6. Upon the execution and delivery of the deed or contract for deed, the property becomes taxable to the purchaser.
7. A person is unqualified to be the highest bidder for property if the person owes delinquent taxes to any county.

SECTION 3. A new section to chapter 57-28 of the North Dakota Century Code is created and enacted as follows:

Notice of tax delinquency - Central indexing system. The secretary of state shall prescribe a form to be used by county officials when notices of delinquent taxes owed to a county are entered in the central indexing system.

Approved April 14, 2003

Filed April 14, 2003

CHAPTER 521

SENATE BILL NO. 2286

(Senators Erbele, Robinson, Urlacher)
(Representatives M. Klein, Solberg, Wrangham)

COOPERATIVE GROSS RECEIPTS REPORTING

AN ACT to amend and reenact section 57-33-03 of the North Dakota Century Code, relating to reporting of cooperative gross receipts for purposes of taxation of rural electric cooperatives; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-33-03 of the North Dakota Century Code is amended and reenacted as follows:

57-33-03. Report of gross receipts. Each cooperative annually on or before May first in each year shall file a report with the tax commissioner in such form and containing such information as the tax commissioner may prescribe and demand. Such report must state the amount of gross receipts derived during the preceding calendar year. Gross receipts derived from the sale of a capital asset do not have to be reported. Each such cooperative at the same time shall file with the county auditor of each county within which any of its lines are located a report giving the length of the line or lines within each taxing district in said county and the total length of its lines within the county as of January first of that year. The county auditor may require a map to be filed, showing the length of the lines within each taxing district of said county. To facilitate the making of such maps, the county auditor shall furnish each cooperative an accurate map of the county showing the boundaries of each taxing district. A cooperative that does not own and operate an electric generation plant and which purchases electric energy for resale to cooperatives subject to taxation under this chapter shall include in its report to the tax commissioner the cost and amount of all electric energy purchased for resale. The cost of electric energy purchased for resale must be deducted from the cooperative's gross receipts before determining the cooperative's tax liability under this chapter. A cooperative that purchases wind power for resale to others from a North Dakota wind energy facility subject to centrally assessed property taxation shall include in its report to the tax commissioner the cost and amount of all such wind energy purchased for resale. The cost of such wind energy purchased for resale must be deducted from the cooperative's gross receipts before determining the cooperative's tax liability under this chapter.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

Approved March 17, 2003
Filed March 17, 2003

CHAPTER 522

HOUSE BILL NO. 1105

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

TELECOMMUNICATIONS TAX DEFINITIONS AND REFUNDS

AN ACT to amend and reenact subsection 6 of section 57-34-01, subsection 2 of section 57-34-03, sections 57-34-04.3 and 57-34-05, and subsection 1 of section 57-34-10 of the North Dakota Century Code, relating to the definition of mobile telecommunications service, refunds to retail customers, refunds to telecommunications carriers, deposit of telecommunications carriers gross receipts tax revenues, and waiver of penalty for failure to report; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 57-34-01 of the North Dakota Century Code is amended and reenacted as follows:

6. "Telecommunications service" means transmitting for consideration of two-way communication by wire, cable, fiber optics, radio, lightwave, microwave, satellite, or other means. The term includes:
 - a. Essential telecommunications service and nonessential telecommunications service as defined in section 49-21-01;
 - b. Telecommunications service that originates and terminates in this state and is billed to a station in this state;
 - c. Interstate telecommunications service that originates or terminates in this state and is billed to a station in this state; ~~and~~
 - d. Mobile telecommunications service that is deemed to be provided by the customer's home service provider under chapter 57-34.1, regardless of where the mobile telecommunications service originates, terminates, or passes through; and
 - e. Telegraph service.

SECTION 2. AMENDMENT. Subsection 2 of section 57-34-03 of the North Dakota Century Code is amended and reenacted as follows:

2. A telecommunications carrier's retail customer in this state is entitled to a refund equal to two and one-half percent of the amount of telecommunications service charges paid to telecommunications carriers by that customer in excess of eight hundred thousand dollars in a calendar year. A refund claim under this subsection must be filed with the tax commissioner before ~~July first~~ December thirty-first of the year following the calendar year for which the refund is claimed. A claim for refund must be made in the manner prescribed by the tax

commissioner. The tax commissioner shall verify that the telecommunications carrier to which the retail customer paid telecommunications service charges has paid the telecommunications gross receipts tax for the year for which the refund is claimed before a refund may be paid. Refunds under this subsection must be paid by the tax commissioner ~~from tax collections under this chapter~~ and are appropriated from the ~~telecommunications carriers tax~~ state general fund as a standing and continuing appropriation to the tax commissioner for that purpose.

SECTION 3. AMENDMENT. Section 57-34-04.3 of the North Dakota Century Code is amended and reenacted as follows:

57-34-04.3. Claims for credit or refund - Continuing appropriation.

1. A telecommunications carrier may file a claim for credit or refund of an overpayment of any tax imposed by this chapter within three years after the due date of the return or within three years after the return was filed, whichever period expires later.
2. A claim for credit or refund must be made by filing with the tax commissioner an amended return, or other report as prescribed by the tax commissioner, accompanied by a statement outlining the specific grounds upon which the claim for credit or refund is based.
3. Refunds under this section must be paid by the tax commissioner and are appropriated from the state general fund as a standing and continuing appropriation to the tax commissioner for that purpose.
4. The tax commissioner shall notify the telecommunications carrier if the state board of equalization disallows all or part of a claim for credit or refund. The decision of the state board of equalization denying a claim for credit or refund is final and irrevocable unless the telecommunications carrier brings an action against the state in district court within six months of the mailing of the notice denying the claim for credit or refund.

SECTION 4. AMENDMENT. Section 57-34-05 of the North Dakota Century Code is amended and reenacted as follows:

57-34-05. Deposit of tax revenues - Allocation to counties - Telecommunications carriers tax fund - Continuing appropriation. ~~Net gross~~ Gross receipts tax revenues of up to eight million four hundred thousand dollars ~~per taxable year~~ under this chapter must be deposited in a special fund in the state treasury, the telecommunications carriers tax fund. ~~Net gross~~ Gross receipts tax revenues under this chapter exceeding eight million four hundred thousand dollars ~~in a taxable year~~ must be deposited in the state general fund. ~~For purposes of this section, "net gross receipts tax revenues" means gross receipts tax revenues minus any refunds paid under section 57-34-03.~~ The tax commissioner shall allocate moneys in the telecommunications carriers tax fund among counties in the same proportion that taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the county bears to all taxes paid by telecommunications carriers in locally assessed property taxes and taxes assessed under chapter 57-06 and this chapter in 1997 and received by taxing districts in the state. The balance ~~of~~ in the telecommunications carriers tax fund, not exceeding

eight million four hundred thousand dollars ~~per taxable year~~, is appropriated as a standing and continuing appropriation to the tax commissioner for annual allocation to counties under this section. If gross receipts tax revenues available for allocation ~~in a taxable~~ on the first day of March of any year are less than eight million four hundred thousand dollars, there is appropriated as a standing and continuing appropriation from the state general fund the amount that, when added to gross receipts tax revenues available for allocation from the telecommunications carriers tax fund ~~for the taxable year~~, results in allocation of eight million four hundred thousand dollars to counties per ~~taxable~~ calendar year. On or before the first day of March of each year, the tax commissioner shall certify for payment to the state treasurer an amount determined to be due each county. The state treasurer shall remit the certified amount to the county treasurers according to the allocation made by the tax commissioner under this section not later than the tenth working day in March of each year.

SECTION 5. AMENDMENT. Subsection 1 of section 57-34-10 of the North Dakota Century Code is amended and reenacted as follows:

1. If a telecommunications carrier refuses or neglects to make the reports required by this chapter, or refuses or neglects to furnish any information requested, the tax commissioner shall use the best available facts and estimates to determine taxation of the gross receipts of that carrier. The tax must be imposed upon the basis of that information. If any company fails to make the report required under this chapter on or before the first day of May of any year, the state board of equalization shall add a penalty of one-quarter of the tax due for failure to make the required report which must be collected as a part of the tax, but the tax commissioner, upon application, may grant extensions of time within which the returns must be filed. For good cause shown, the tax commissioner may waive all or any part of the penalty that attached under this section.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 523

HOUSE BILL NO. 1471

(Representatives Carlson, Timm)

CORPORATE INCOME TAX RATES

AN ACT to create and enact a new subsection to section 57-38.4-02 of the North Dakota Century Code, relating to the tax on the water's edge filing method; to amend and reenact subsections 1 and 2 of section 57-35.3-02, subsections 1 and 3 of section 57-38-01.3, section 57-38-30, and subsection 3 of section 57-38-40 of the North Dakota Century Code, relating to financial institutions taxes, the corporate income tax deduction for federal income taxes paid, net operating losses, and corporate income tax rates; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²³⁶ **SECTION 1. AMENDMENT.** Subsections 1 and 2 of section 57-35.3-02 of the North Dakota Century Code are amended and reenacted as follows:

1. In determining "taxable income" there must be added to federal taxable income:
 - a. The adjustments provided by subdivisions ~~d, e, and i~~ c, d, and g of subsection 1 of section 57-38-01.3;
 - b. Interest not subject to federal tax upon obligations of the state of North Dakota and its political subdivisions;
 - c. The amount of any charitable contribution deduction taken for federal income tax purposes under section 170 of the Internal Revenue Code;
 - d. In the case of a building and loan association or savings and loan association, the amount of any bad debt reserve deduction taken for federal income tax purposes under section 585 of the Internal Revenue Code; and
 - e. Dividends paid by a federal reserve bank to the extent not subject to federal tax.
2. In determining "taxable income" there must be subtracted from federal taxable income:
 - a. The adjustments provided by ~~subdivisions~~ subdivision ~~b, e, and h~~ of subsection 1 of section 57-38-01.3;

²³⁶ Section 57-35.3-02 was also amended by section 2 of Senate Bill No. 2159, chapter 524, and section 3 of Senate Bill No. 2099, chapter 529.

- b. In the case of a financial institution described in subdivision a of subsection 2 of section 57-35.3-01, the adjustment provided by subdivision g of subsection 1 of section 57-38-01.3;
- c. In the case of a building and loan association or savings and loan association that uses the bad debt reserve method under section 585 of the Internal Revenue Code to account for bad debts for federal income tax purposes, an amount equal to the deduction for bad debts that would have been allowed under section 166(a) of the Internal Revenue Code if a deduction had not been claimed under section 585 or 593;
- d. The amount of any adjustments taken into account for federal income tax purposes under section 593(g) of the Internal Revenue Code;
- e. The amount of any interest and expenses relating to income not taxable for federal income tax purposes if the income is taxable under sections 57-35.3-01 through 57-35.3-12 and the interest and expenses were disallowed as deductions under section 171(a)(2), 265, or 291 of the Internal Revenue Code in computing federal taxable income;
- f. The amount of any wage and salary expenses disallowed as deductions under section 280C(a) of the Internal Revenue Code in computing federal taxable income;
- g. An amount equal to the deduction for charitable contributions that would be allowed for federal income tax purposes under section 170 of the Internal Revenue Code if the percentage limitation of section 170(b)(2) of the Internal Revenue Code was applied in all relevant taxable periods to taxable income, rather than federal taxable income, but computed without regard to this subdivision and that portion of subdivision a that refers to subdivision g of subsection 1 of section 57-38-01.3. However, no deduction is allowable for a contribution if and to the extent that a credit is allowed for the contribution under section 57-35.3-05; ~~and~~
- h. The amount of net income not allocated and apportioned to this state under sections 57-35.3-13 through 57-35.3-17, but only to the extent that the amount of net income not allocated and apportioned to this state under those sections is not included in any adjustment made pursuant to the preceding subdivisions; and
- i. The amount of federal income tax liability for the same taxable year for which North Dakota taxable income is being determined, to the extent that the federal taxes are computed upon income that becomes part of North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection 5 of section 57-38-01. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an

adjustment was required but only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax must be reported and included in North Dakota taxable income in the year in which the tax was originally deducted. Income must be further reduced by any federal alternative minimum tax when a federal credit for a prior year minimum tax is taken. This reduction is limited to any federal alternative minimum tax previously disallowed in computing North Dakota taxable income and may not exceed North Dakota taxable income computed before the North Dakota net operating loss deduction. Any excess may be carried forward to the next taxable year a federal credit for a prior year minimum tax is taken.

²³⁷ **SECTION 2. AMENDMENT.** Subsection 1 of section 57-38-01.3 of the North Dakota Century Code is amended and reenacted as follows:

1. The taxable income of a corporation as computed pursuant to the provisions of the Internal Revenue Code of 1954, as amended, must be:
 - a. Reduced by any interest received from obligations of the United States that is included in taxable income or in the computation thereof on the federal return.
 - b. Reduced by any other income included in the taxable income, or in the computation thereof, on the federal return which is exempt from taxation by this state because of the provisions of the Constitution of North Dakota or the Constitution of the United States.
 - c. ~~Reduced by the amount of federal income tax liability, as computed under chapter 4 of the Internal Revenue Code of 1986, as amended, for the same taxable year for which the North Dakota return is being filed, to the extent that the taxes are computed upon income which becomes a part of the North Dakota taxable income. Provided, that no adjustment to federal income taxes, paid or accrued, is required because of allowable deductions to federal taxable income made under the cost recovery provisions of subdivision b of subsection 5 of section 57-38-01. Federal income taxes for prior periods assessed against the taxpayer by reason of audit or other adjustment by the internal revenue service, or voluntary disclosure by the taxpayer, are not deductible except in the period in which income so taxed was reported or reportable or in which an adjustment was required but only after an adjustment is made by or with the office of the state tax commissioner. A refund of federal income tax must be reported and included in North Dakota taxable income in the year in which the tax was originally deducted. Income must be further reduced by federal alternative minimum tax when a federal credit for prior year minimum tax is taken. This reduction is limited to federal alternative minimum tax previously disallowed in computing North Dakota taxable income and may not exceed North Dakota taxable~~

²³⁷ Section 57-38-01.3 was also amended by section 3 of House Bill No. 1471, chapter 523, and section 3 of Senate Bill No. 2099, chapter 529.

~~income computed before the North Dakota net operating loss deduction. Any excess may be carried forward to the next taxable year a federal credit for prior year minimum tax is taken.~~

- ~~e.~~ Increased by the amount of any income taxes, including income taxes of foreign countries, or franchise or privilege taxes measured by income, to the extent that such taxes were deducted to determine federal taxable income.
- ~~e.~~ d. Increased by the amount of any interest and dividends from foreign securities and from securities of state and their political subdivisions exempt from federal income tax, provided that interest upon obligations of the state of North Dakota or any of its political subdivisions may not be included.
- ~~f.~~ e. Reduced by the amount of net income not allocated and apportioned to this state under the provisions of chapter 57-38.1, but only to the extent that the amount of net income not allocated and apportioned to this state under the provisions of that chapter is not included in any adjustment made pursuant to the preceding subdivisions.
- ~~g.~~ f. Reduced by dividends or income received by any person from stock or interest in any corporation, the income of which has been assessed and paid by a corporation under this chapter or sections 57-35.3-01 through 57-35.3-12, received by the taxpayer and included in the gross income within the income year if such corporation has reported the name and address of each person owning stock and the amount of dividends or income paid each such person during the year, but when only part of the income of any corporation has been assessed and income tax paid under this chapter or sections 57-35.3-01 through 57-35.3-12, only a corresponding part of the dividends or income received therefrom may be deducted.
- ~~h.~~ Repealed by S.L. 1999, ch. 487, § 3.
- ~~i.~~ g. Increased by the amount of any special deductions and net operating loss deductions to the extent that these items were deducted in determining federal taxable income.
- ~~j.~~ h. Reduced by dividends paid, as defined in section 561 of the Internal Revenue Code of 1986, as amended, by a regulated investment company or a fund of a regulated investment company as defined in section 851(a) or 851(g) of the Internal Revenue Code of 1986, as amended, except that the deduction for dividends paid is not allowed with respect to dividends attributable to any income that is not subject to taxation under this chapter when earned by the regulated investment company. Sections 852(b)(7) and 855 of the Internal Revenue Code of 1986, as amended, apply for computing the deduction for dividends paid. A regulated investment company is not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal Revenue Code of 1986, as amended.

Provided, however, that each adjustment in the above subdivisions authorized under law is allowed only to the extent that the adjustment is allocated and apportioned to North Dakota income.

²³⁸ **SECTION 3. AMENDMENT.** Subsection 3 of section 57-38-01.3 of the North Dakota Century Code is amended and reenacted as follows:

3. The sum calculated pursuant to subsection 1 must be reduced by the amount of any net operating loss that is attributable to North Dakota sources. If the net operating loss that is attributable to North Dakota sources exceeds the sum calculated pursuant to subsection 1, the excess may be ~~carried back or~~ carried forward for the same time period that an identical federal net operating loss may be ~~carried back or~~ carried forward. If a corporation uses an apportionment formula to determine the amount of income that is attributable to North Dakota, the corporation must use the same formula to determine the amount of net operating loss that is attributable to North Dakota. In addition, no deduction may be taken for a ~~carryback or~~ carryforward when determining the amount of net operating loss that is attributable to North Dakota sources.

²³⁹ **SECTION 4. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30. Imposition and rate of tax on corporations. A tax is hereby imposed upon the taxable income of every domestic and foreign corporation received from the sources described in sections 57-38-12, 57-38-13, and 57-38-14, which must be levied, collected, and paid annually as in this chapter provided:

1. a. For the first three thousand dollars of taxable income, at the rate of ~~three~~ two and six-tenths percent.
- b. On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of four and ~~one-half~~ one-tenth percent.
- c. On all taxable income above eight thousand dollars and not in excess of twenty thousand dollars, at the rate of ~~six~~ five and six-tenths percent.
- d. On all taxable income above twenty thousand dollars, and not in excess of thirty thousand dollars, at the rate of ~~seven~~ six and ~~one-half~~ four-tenths percent.
- e. On all taxable income above thirty thousand dollars, ~~and not in excess of fifty thousand dollars,~~ at the rate of ~~nine~~ seven percent.

²³⁸ Section 57-38-01.3 was also amended by section 2 of House Bill No. 1471, chapter 523, and section 3 of Senate Bill No. 2099, chapter 529.

²³⁹ Section 57-38-30 was also amended by section 3 of Senate Bill No. 2091, chapter 528.

f. ~~On all taxable income above fifty thousand dollars, at the rate of ten and one-half percent.~~

2. A corporation that has paid North Dakota alternative minimum tax in years beginning before January 1, 1991, may carry over any alternative minimum tax credit remaining to the extent of the regular income tax liability of the corporation for a period not to exceed four taxable years.

SECTION 5. AMENDMENT. Subsection 3 of section 57-38-40 of the North Dakota Century Code is amended and reenacted as follows:

3. A corporation may file a claim for credit or refund of an overpayment of tax resulting from the carryback of a net operating loss under subsection 3 of section 57-38-01.3, or resulting from a federal capital loss carryback, within three years after the prescribed due date for filing the return, including extensions, for the tax year in which the loss was incurred. The provisions of this subsection applicable to net operating losses are ~~effective~~ ineffective for loss years beginning after December 31, ~~1986~~ 2002.

SECTION 6. A new subsection to section 57-38.4-02 of the North Dakota Century Code is created and enacted as follows:

In addition to the tax imposed under subsection 1 of section 57-38-30, there is imposed an additional tax of three and one-half percent of taxable income which must be levied, collected, and paid annually in the same manner as provided in chapter 57-38.

SECTION 7. EFFECTIVE DATE. Sections 1, 2, 4, and 6 of this Act are effective for taxable years beginning after December 31, 2003. Sections 3 and 5 of this Act are effective for net operating losses incurred in taxable years beginning after December 31, 2002.

Approved April 16, 2003

Filed April 16, 2003

CHAPTER 524

SENATE BILL NO. 2159

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

TAX LAW REVISIONS

AN ACT to amend and reenact subsection 2 of section 5-01-17, subsection 2 of section 57-35.3-02, subsections 3, 4, 5, and 6 of section 57-36-09.5, section 57-38-30.3, subsection 15 of section 57-39.2-04, subsection 1 of section 57-40.3-01, section 57-51-02.2, and subsections 1 and 2 of section 57-51-06 of the North Dakota Century Code, relating to farm winery license label registration, correction of statutory references in the financial institutions tax law, collection of tobacco products taxes, calculation of adjustments for individual income tax, exemption of gross receipts from contractor sales, the definition of an all-terrain vehicle for motor vehicle excise tax purposes, gross production tax on gas, and statements made by a person paying the gross production tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁰ **SECTION 1. AMENDMENT.** Subsection 2 of section 5-01-17 of the North Dakota Century Code is amended and reenacted as follows:

2. A license authorizes the sale, on the farm winery premises, of table or sparkling wines produced by that farm winery at on-sale or off-sale, in retail lots, and not for resale, in total quantities not in excess of one thousand gallons in a calendar year; glassware; wine literature and accessories; cheese, cheese spreads, and other snack food items; and the dispensing of 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. Labels for each type or brand produced must be registered with the state ~~treasurer~~ tax commissioner, without fee before sale. A farm winery may not engage in any wholesaling activities. All sales and delivery of wines to any other retail licensed premises may be made only through a wholesale liquor license.

²⁴¹ **SECTION 2. AMENDMENT.** Subsection 2 of section 57-35.3-02 of the North Dakota Century Code is amended and reenacted as follows:

2. In determining "taxable income" there must be subtracted from federal taxable income:

²⁴⁰ Section 5-01-17 was also amended by section 1 of House Bill No. 1298, chapter 67.

²⁴¹ Section 57-35.3-02 was also amended by section 1 of House Bill No. 1471, chapter 523, and section 3 of Senate Bill No. 2099, chapter 529.

- a. The adjustments provided by subdivisions b, and c, ~~and~~ h of subsection 1 of section 57-38-01.3;
- b. In the case of a financial institution described in subdivision a of subsection 2 of section 57-35.3-01, the adjustment provided by subdivision g of subsection 1 of section 57-38-01.3;
- c. In the case of a building and loan association or savings and loan association that uses the bad debt reserve method under section 585 of the Internal Revenue Code to account for bad debts for federal income tax purposes, an amount equal to the deduction for bad debts that would have been allowed under section 166(a) of the Internal Revenue Code if a deduction had not been claimed under section 585 or 593;
- d. The amount of any adjustments taken into account for federal income tax purposes under section 593(g) of the Internal Revenue Code;
- e. The amount of any interest and expenses relating to income not taxable for federal income tax purposes if the income is taxable under sections 57-35.3-01 through 57-35.3-12 and the interest and expenses were disallowed as deductions under section 171(a)(2), 265, or 291 of the Internal Revenue Code in computing federal taxable income;
- f. The amount of any wage and salary expenses disallowed as deductions under section 280C(a) of the Internal Revenue Code in computing federal taxable income;
- g. An amount equal to the deduction for charitable contributions that would be allowed for federal income tax purposes under section 170 of the Internal Revenue Code if the percentage limitation of section 170(b)(2) of the Internal Revenue Code was applied in all relevant taxable periods to taxable income, rather than federal taxable income, but computed without regard to this subdivision and that portion of subdivision a b that refers to subdivision g of subsection 1 of section 57-38-01.3. However, no deduction is allowable for a contribution if and to the extent that a credit is allowed for the contribution under section 57-35.3-05; and
- h. The amount of net income not allocated and apportioned to this state under sections 57-35.3-13 through 57-35.3-17, but only to the extent that the amount of net income not allocated and apportioned to this state under those sections is not included in any adjustment made pursuant to the preceding subdivisions.

SECTION 3. AMENDMENT. Subsections 3, 4, 5, and 6 of section 57-36-09.5 of the North Dakota Century Code are amended and reenacted as follows:

3. ~~To preserve the lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any property situated in a county, the commissioner shall file a notice of the lien with the recorder of the county in which the property is located~~ Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any

interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in this section takes free of, or has priority over, the lien.

4. ~~The recorder of each county commissioner shall prepare and keep index in the recorder's office a book known as "index of tax liens", so ruled as to show in appropriate columns all of central indexing system~~ the following data; ~~under the names of taxpayers, arranged alphabetically:~~
 - a. The name of the taxpayer.
 - b. The name "State of North Dakota" as claimant tax identification number or social security number of the taxpayer.
 - c. The time notice of lien was received name "State of North Dakota" as claimant.
 - d. The date of and time the notice of lien was indexed.
 - e. The amount of the lien when due.
 - f. The date of satisfaction.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve the same and shall index is effective as of eight a.m. next day following the indexing of the notice in the index book and the lien is effective from the time of indexing. Any notice of lien filed by the commissioner with a recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the filing indexing of a lien the notice of lien or the for its satisfaction of a lien.
6. Upon payment of a tax as to which the commissioner has filed indexed notice with the recorder in the central indexing system, the commissioner shall file with the recorder index a satisfaction of tax and the recorder shall enter the satisfaction on the notice on file and indicate the fact on the index the lien in the central indexing system.

²⁴² **SECTION 4. AMENDMENT.** Section 57-38-30.3 of the North Dakota Century Code is amended and reenacted as follows:

²⁴² Section 57-38-30.3 was also amended by section 20 of House Bill No. 1426, chapter 96, section 2 of Senate Bill No. 2098, chapter 527, section 2 of Senate Bill No. 2099, chapter 529, section 2 of Senate Bill No. 2367, chapter 526, and section 1 of Senate Bill No. 2101, chapter 530.

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. For a nonresident individual, estate, or trust, the tax is equal to the tax determined in accordance with the applicable schedule in subdivisions a through e multiplied by the fraction under subdivision f.

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.

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 a nonresident individual, estate, or trust, the tax determined under the applicable schedule in subdivisions a through e must be multiplied by a fraction in which:
- (1) The numerator is the individual's federal adjusted gross income derived from North Dakota sources; and
 - (2) The denominator is the individual's federal adjusted gross income from all sources reduced by the net income from the amounts specified in subdivisions a and b of subsection 3.
- g. If married individuals who file a joint federal income tax return are required to file separate state income tax returns under any provision of this chapter, the tax under this subsection for each spouse must be determined by applying the rates under subdivision b to the spouses' joint North Dakota taxable income and prorating the result between the spouses based on their separate North Dakota taxable incomes.
- h. 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.
 - 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.
3. ~~Each adjustment in subsection 2 may be allowed only to the extent the adjustment is attributable to income allocated and apportioned to this state.~~
4. 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.
- ~~5.~~ 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.
- ~~6.~~ 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.
- ~~7.~~ 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.

- ~~8.~~ 7. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38-01.20.
- ~~9.~~ 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.
- ~~10.~~ 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.
- ~~11.~~ 10.
- a. At the election of an individual taxpayer engaged in a farming business, 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. 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.

- 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.
- 42- 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.
- 43- 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.
- 44- 13. A taxpayer filing a return under this section is entitled to the credit provided under section 57-38.5-03.

²⁴³ **SECTION 5. AMENDMENT.** Subsection 15 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

- 15. Gross receipts from sales in which a contractor furnishes to the retailer a certificate which includes the contractor's license number assigned to the contractor under the provisions of chapter 43-07 ~~and the use tax account number assigned to the contractor by the commissioner pursuant to section 43-07-04.~~ Such certificate shall be in the form prescribed by the commissioner and shall be furnished by the contractor to the retailer each calendar year prior to the making of any purchases during such calendar year from the retailer without liability for paying the tax to the retailer. Any contractor furnishing such certificate must report and remit the tax to the commissioner on purchases taxable under this chapter made by the contractor in the same manner as retailers remit such tax under this chapter.

SECTION 6. AMENDMENT. Subsection 1 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

- 1. "All-terrain vehicle" means any motorized off-highway vehicle fifty inches [1270 millimeters] or less in width, having a dry weight of ~~six hundred~~ one thousand pounds [~~272.15~~ 453.59 kilograms] or less, traveling on three or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.

²⁴³ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 1 of House Bill No. 1328, chapter 536, section 21 of House Bill No. 1426, chapter 96, section 6 of Senate Bill No. 2096, chapter 539, section 7 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, and section 10 of Senate Bill No. 2096, chapter 539.

SECTION 7. AMENDMENT. Section 57-51-02.2 of the North Dakota Century Code is amended and reenacted as follows:

57-51-02.2. Gross production tax - Gas. A gross production tax is levied upon all gas produced within North Dakota ~~less any part thereof, the ownership or right to which~~ except gas that is exempt from taxation. The tax levied must attach to the whole production, including the royalty interest. The tax on gas must be calculated by taking the taxable production in mcf times the gas tax rate.

1. The gas tax rate is four cents times the gas base rate adjustment for each fiscal year as calculated under subsection 2.
2.
 - a. The tax department shall annually determine the gas base rate adjustment and the resulting gas tax rate for each fiscal year beginning on July first.
 - b. The gas base rate adjustment for the fiscal year is a fraction, the numerator of which is the annual average of the gas fuels producer price index, commodity code 05-3, as calculated and published by the United States department of labor, bureau of labor statistics, for the previous calendar year, and the denominator of which is seventy-five and seven-tenths.
 - c. The tax department shall provide the gas base rate adjustment and the gas tax rate for the fiscal year, as determined under this subsection, to affected producers by written notice mailed on or before June first.
 - d. If the index used to determine the gas base rate adjustment is substantially revised, or if the base year for the index is changed, the department by administrative rule shall make appropriate adjustment to the method used to determine the gas base rate adjustment to ensure a result which is reasonably consistent with the result which would have been obtained had the index not been revised or the base year changed.
 - e. If the gas fuels producer price index is discontinued, a comparable index must be adopted by the department by an administrative rule.

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 57-51-06 of the North Dakota Century Code are amended and reenacted as follows:

1. The tax herein provided for must be paid to the commissioner and the person paying the tax shall file with the commissioner at the time the tax is required to be paid a statement ~~under oath~~ on forms prescribed by the commissioner. The commissioner may require a purchaser to file the statement or report by electronic data interchange or other electronic media.

2. Any person engaged in the production, within this state, of oil shall on or before the twenty-fifth day of the next succeeding month after production, and any person engaged in the production of gas within this state shall, on or before the fifteenth of the second succeeding month after production, file with the commissioner a statement ~~under oath~~ upon forms prescribed by the commissioner. The commissioner may waive the requirement that a producer file a well production report. A waiver by the commissioner of the requirement to file a well production report does not release the producer from any obligation to remit the tax under this chapter. A waiver does not release the producer from any duty or obligation under section 57-51-07 to maintain production records for inspection by the commissioner.

Approved March 14, 2003

Filed March 17, 2003

CHAPTER 525**HOUSE BILL NO. 1269**

(Representatives Porter, Price, Uglen)
(Senator Fischer)

**NONCOMPLIANT TOBACCO PRODUCT SALE
PROHIBITED**

AN ACT to create and enact a new section to chapter 57-36 of the North Dakota Century Code, relating to the sale and distribution of tobacco products manufactured by tobacco product manufacturers not in compliance with state or federal law; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-36 of the North Dakota Century Code is created and enacted as follows:

Sale of noncompliant tobacco products. A dealer, distributor, or other person may not knowingly sell or distribute in this state any tobacco product manufactured by a tobacco product manufacturer not in compliance with subsection 2 of section 51-25-02.

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

Approved April 18, 2003

Filed April 18, 2003

CHAPTER 526

SENATE BILL NO. 2367

(Senators Heitkamp, Grindberg, Krauter)
(Representatives DeKrey, Gulleson, Warnke)

ARMED FORCES INCOME TAX DEDUCTION

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.2 and a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to an income tax deduction for members of the reserve components of the armed forces of the United States when called to federal active service; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁴⁴ **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 received by the taxpayer as payment for services performed when called or ordered to 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. An individual claiming the reduction under this subdivision may not also claim the reduction under subdivision k for the time the individual was under federal orders for active duty and may not claim a reduction on income already excluded from federal taxation due to service in a combat or hazardous duty zone. This subdivision does not apply to federal service while attending annual training, basic military training, professional military education, or active guard and reserve tours for which the member has volunteered.

²⁴⁵ **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 received by the taxpayer as payment for services performed when called or ordered to 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, professional military education, or active guard and reserve tours for which the member has volunteered.

²⁴⁴ Section 57-38-01.2 was also amended by section 102 of House Bill No. 1183, chapter 138, and section 3 of Senate Bill No. 2099, chapter 529.

²⁴⁵ Section 57-38-30.3 was also amended by section 20 of House Bill No. 1426, chapter 96, section 2 of Senate Bill No. 2098, chapter 527, section 2 of Senate Bill No. 2099, chapter 529, section 1 of Senate Bill No. 2101, chapter 530, and section 4 of Senate Bill No. 2159, chapter 524.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 527

SENATE BILL NO. 2098

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

INCOME TAX CREDIT

AN ACT to create and enact a new subdivision to subsection 5 of section 57-38-30.3 of the North Dakota Century Code, relating to requirements for claiming a credit for income tax paid to another state; to amend and reenact subsections 2 and 6 of section 57-38-04 of the North Dakota Century Code, relating to requirements for claiming a credit for income tax paid to another state; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 6 of section 57-38-04 of the North Dakota Century Code are amended and reenacted as follows:

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 ~~if written proof of such payment is furnished to the tax commissioner~~; 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.

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, 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 ~~if written proof of the payment is furnished to the tax commissioner~~; 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.

²⁴⁶ **SECTION 2.** A new subdivision to subsection 5 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

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.

²⁴⁶ Section 57-38-30.3 was also amended by section 20 of House Bill No. 1426, chapter 96, section 2 of Senate Bill No. 2099, chapter 529, section 2 of Senate Bill No. 2367, chapter 526, section 1 of Senate Bill No. 2101, chapter 530, and section 4 of Senate Bill No. 2159, chapter 524.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2002.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 528

SENATE BILL NO. 2091

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

CORPORATE INCOME TAX REVISIONS

AN ACT to amend and reenact sections 57-38-11, 57-38-14, and 57-38-30 of the North Dakota Century Code, relating to obsolete corporate income tax provisions; and to repeal sections 57-38-12 and 57-38-13 of the North Dakota Century Code, relating to obsolete corporate income tax provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-38-11 of the North Dakota Century Code is amended and reenacted as follows:

57-38-11. Annual tax on corporations. The tax imposed by this chapter must be levied, collected, and paid annually with respect to its North Dakota ~~net~~ income, as hereinafter defined, received by every corporation doing business in this state.

SECTION 2. AMENDMENT. Section 57-38-14 of the North Dakota Century Code is amended and reenacted as follows:

57-38-14. Allocation in special cases General provisions relating to corporate income. ~~In the special cases mentioned in this section, the~~ The following principles may be applied in allocating corporate determining North Dakota income:

1. Any corporation organized under the laws of North Dakota and subject to a tax under the provisions of this chapter, which maintains no regular place of business outside this state, except a statutory office, must be taxed upon its entire ~~net~~ income.
2. Corporations engaged in business within and without this state may be taxed only on such income as is derived from business transacted and property located within this state. The amount of such income apportionable to North Dakota ~~may~~ must be determined ~~by an allocation and separate accounting thereof, when in the judgment of the tax commissioner that method will reasonably reflect the income properly assignable to this state~~ as provided in chapter 57-38.1.
3. Any corporation liable to report under this chapter and owning or controlling, either directly or indirectly, substantially all of the voting capital stock of another corporation, or of other corporations, may be required to make a consolidated report showing the combined ~~net~~ income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the tax commissioner may require, but excluding intercorporate stock holdings and intercorporate accounts.
4. Any corporation liable to report under this chapter and owned or controlled either directly or indirectly by another corporation may be

required to make a report consolidated with the owning company, showing the combined ~~net~~ income, such assets of the corporation as are required for the purposes of this chapter, and such other information as the tax commissioner may require, but excluding intercorporate stock holdings and intercorporate accounts.

5. In case it appears to the tax commissioner that any arrangement exists in such a manner as to reflect improperly the business done, the segregable assets, or the entire ~~net~~ income earned from business done in this state, the tax commissioner is authorized and empowered, in such manner as the tax commissioner may determine, to adjust the tax equitably.
6. The tax commissioner may permit or require the filing of a combined report if substantially all the voting capital stock of two or more corporations liable to report under this chapter is owned or controlled by the same interests. The tax commissioner may impose the tax provided by this chapter as though the combined entire ~~net~~ income and segregated assets were those of one corporation, but in the computation, dividends received from any corporation whose assets, as distinguished from shares of stock, are included in the segregations may not be included in the ~~net~~ income.
7. When any corporation required to make a return under this chapter conducts the business, whether under agreement or otherwise, in such manner as directly or indirectly to benefit the members or stockholders of the corporation, or any of them, or any person or persons, directly or indirectly interested in such business, by selling its products, or the goods or commodities in which it deals, at less than a fair price which might be obtained therefor, or if such a corporation, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, acquires and disposes of the products of the corporation owning the substantial portion of its capital stock, in such manner as to create a loss or improper ~~net~~ income, the tax commissioner may require such facts as the tax commissioner deems necessary for the proper computation provided by this chapter, and for the purposes of this chapter may determine the amount which must be deemed to be the entire ~~net~~ income, of the business of such corporation for the calendar or fiscal year. In determining such entire ~~net~~ income, the tax commissioner shall have regard to the fair profits which, but for any agreement, arrangement, or understanding, might be or could have been obtained from dealing in such products, goods, or commodities.
8. If it appears to the tax commissioner that the segregation of assets shown by any report made under this chapter does not reflect properly the corporate activity or business done, or the income earned from corporate activity, or from business done in this state because of the character of the corporation's business and the character and location of its assets, the tax commissioner is authorized and empowered to adjust the tax equitably.
9. ~~In determining the entire net income for purposes of equitable taxation under this section, the tax commissioner may determine the portion of net income derived from business done within this state by an allocation upon the basis of sales, purchases, expenses of manufacture, payroll, value and situs of tangible property, or by reference to these or other~~

factors, or by such other method of allocation as is fairly calculated to assign to this state the portion of net income reasonably attributable to the business done within this state. In determining the entire net income for purposes of equitable taxation under this chapter, the tax commissioner may include income from any source, if the assets from which the income was derived shall be included in any segregation for the purpose of computing the tax.

40. In case any corporation or individual uses leased property in its business, the value of the leasehold interest of the lessee must be included in the value of the tangible property of the corporation and computed at eight times the net annual rental rate for purposes of allocation or apportionment of the net income.
44. Notwithstanding any other provision of law, two or more North Dakota domestic corporations, affiliated as parent and subsidiary, and filing a federal consolidated tax return, shall file a combined report and consolidated return for income tax under this chapter.

²⁴⁷ **SECTION 3. AMENDMENT.** Section 57-38-30 of the North Dakota Century Code is amended and reenacted as follows:

57-38-30. Imposition and rate of tax on corporations. A tax is hereby imposed upon the taxable income of every domestic and foreign corporation ~~received from the sources described in sections 57-38-12, 57-38-13, and 57-38-14,~~ which must be levied, collected, and paid annually as in this chapter provided:

1. a. For the first three thousand dollars of taxable income, at the rate of three percent.
 - b. On all taxable income above three thousand dollars and not in excess of eight thousand dollars, at the rate of four and one-half percent.
 - c. On all taxable income above eight thousand dollars and not in excess of twenty thousand dollars, at the rate of six percent.
 - d. On all taxable income above twenty thousand dollars, and not in excess of thirty thousand dollars, at the rate of seven and one-half percent.
 - e. On all taxable income above thirty thousand dollars, and not in excess of fifty thousand dollars, at the rate of nine percent.
 - f. On all taxable income above fifty thousand dollars, at the rate of ten and one-half percent.
2. A corporation that has paid North Dakota alternative minimum tax in years beginning before January 1, 1991, may carry over any alternative

²⁴⁷ Section 57-38-30 was also amended by section 4 of House Bill No. 1471, chapter 523.

minimum tax credit remaining to the extent of the regular income tax liability of the corporation for a period not to exceed four taxable years.

SECTION 4. REPEAL. Sections 57-38-12 and 57-38-13 of the North Dakota Century Code are repealed.

Approved March 7, 2003

Filed March 7, 2003

CHAPTER 529

SENATE BILL NO. 2099

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

INCOME TAX ROUNDING

AN ACT to create and enact a new section to chapter 57-38 and a new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code, relating to the authority of the tax commissioner to provide for the rounding of dollar amounts on income tax returns, statements, forms, or other documents and an individual income tax deduction for the new and expanding business exemption; to repeal subdivision b of subsection 2 of section 57-35.3-02, subdivision i of subsection 1 of section 57-38-01.2, and subdivision g of subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to the tax deduction for dividends; to provide an effective date; and to provide for retroactive application.

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:

Rounding. With respect to any amount required to be shown on any return, form, statement, or other document required to be filed with the tax commissioner and for purposes of amounts in tax tables prescribed under subsection 12 of section 57-38-30.3 and subsection 3 of section 57-38-59, the amount may be rounded to the nearest dollar. The cents must be disregarded if the cents amount to less than one-half dollar. If the cents amount to one-half dollar or more, the amount must be increased to the next whole dollar.

²⁴⁸ **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 income from a new and expanding business exempt from state income tax under section 40-57.1-04.

²⁴⁸ Section 57-38-30.3 was also amended by section 20 of House Bill No. 1426, chapter 96, section 2 of Senate Bill No. 2098, chapter 527, section 2 of Senate Bill No. 2367, chapter 526, section 1 of Senate Bill No. 2101, chapter 530, and section 4 of Senate Bill No. 2159, chapter 524.

²⁴⁹ **SECTION 3. REPEAL.** Subdivision b of subsection 2 of section 57-35.3-02, subdivision i of subsection 1 of section 57-38-01.2, and subdivision g of subsection 1 of section 57-38-01.3 of the North Dakota Century Code are repealed.

SECTION 4. EFFECTIVE DATE. Section 2 of this Act is effective for taxable years beginning after December 31, 2002.

SECTION 5. RETROACTIVE APPLICATION. Section 3 of this Act applies retroactively to taxable years beginning after December 31, 1999.

Approved April 11, 2003

Filed April 14, 2003

²⁴⁹ Section 57-35.3-02 was also amended by section 1 of House Bill No. 1471, chapter 523, and section 2 of Senate Bill No. 2159, chapter 524. Section 57-38-01.2 was also amended by section 1 of Senate Bill No. 2367, chapter 526, and section 102 of House Bill No. 1183, chapter 138. Section 57-38-01.3 was also amended by section 2 of House Bill No. 1471, chapter 523, and section 3 of House Bill No. 1471, chapter 523.

CHAPTER 530

SENATE BILL NO. 2101

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

FARM INCOME AVERAGING

AN ACT to amend and reenact subdivisions a and b of subsection 11 of section 57-38-30.3 of the North Dakota Century Code, relating to income averaging for farmers for income tax purposes.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁰ **SECTION 1. AMENDMENT.** Subdivisions a and b of subsection 11 of section 57-38-30.3 of the North Dakota Century Code are amended and reenacted as follows:

11. a. ~~At the election of~~ 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.

²⁵⁰ Section 57-38-30.3 was also amended by section 20 of House Bill No. 1426, chapter 96, section 2 of Senate Bill No. 2098, chapter 527, section 2 of Senate Bill No. 2099, chapter 529, section 2 of Senate Bill No. 2367, chapter 526, and section 4 of Senate Bill No. 2159, chapter 524.

- 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.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 531

HOUSE BILL NO. 1309

(Representatives Gulleeson, Mueller, Nelson, Nicholas)
(Senators Heitkamp, Thane)

BIODIESEL RETROFIT AND INCOME TAX CREDIT

AN ACT to create and enact a new section to chapter 57-38 of the North Dakota Century Code, relating to a corporate income tax credit for a portion of the cost of retrofitting an existing facility or adapting a new facility for producing or blending diesel fuel containing biodiesel fuel; to amend and reenact sections 24-02-01.5, 57-43.2-01, 57-43.2-02, and 57-43.2-03 of the North Dakota Century Code, relating to a special fuels tax reduction for fuel containing biodiesel; 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 24-02-01.5 of the North Dakota Century Code is amended and reenacted as follows:

24-02-01.5. (Contingent effective date - See note - Effective through June 30, 2003 2005) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 6 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department.

(Effective after June 30, 2003 2005) Department of transportation - Administrative rules. The department of transportation may adopt the administrative rules necessary to carry out its responsibilities and functions as created and transferred by sections 24-02-01.1 through 24-02-01.5. Rules adopted by the agencies whose functions relate to the functions or agencies created, transferred, or covered by sections 2-05-03, 24-02-01.1 through 24-02-01.5, subsections 7 and 11 of section 24-01-01.1, sections 24-02-13, 24-16-02, 24-17-02, subsections 8, 12, and 13 of section 39-01-01, subsection 1 of section 39-16-01, subsection 7 of section 39-24-01, subsection 2 of section 49-17.1-01, subsection 1 of section 54-06-04, subsection 1 of section 54-27-19, subsection 6 of section 57-40.3-01, subsection 1 of section 57-43.1-01, section 57-43.1-44, subsection 5 of section 57-43.2-01, and section 57-43.2-37 remain in effect until they are specifically amended or repealed by the department.

SECTION 2. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Corporate income tax credit for biodiesel production equipment costs.

A taxpayer is entitled to a credit against tax liability determined under section 57-38-30 in the amount of ten percent per year for five years of the taxpayer's direct costs incurred after December 31, 2002, to adapt or add equipment to retrofit an existing facility or adapting a new facility in this state for the purpose of producing or blending diesel fuel containing at least two percent biodiesel fuel by volume. For purposes of this section, "biodiesel" means fuel meeting the specifications adopted by the American society for testing and materials. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for the taxable year and each year's credit amount may be carried forward for up to five taxable years. A taxpayer is limited to two hundred fifty thousand dollars in the cumulative amount of credits under this section for all taxable years. A taxpayer may not claim a credit under this section for any taxable year before the taxable year in which the facility begins production or blending of diesel fuel containing at least two percent biodiesel fuel by volume, but eligible costs incurred before the taxable year production or blending begins may be claimed for purposes of the credit under this section for taxable years on or after the taxable year production or blending begins.

SECTION 3. AMENDMENT. Section 57-43.2-01 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-01. (Contingent effective date - See note - Effective through June 30, 2003 2005) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Biodiesel" means 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.
3. "Commissioner" means the state tax commissioner.
4. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
5. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.
6. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.

7. "Director" means the director of the department of transportation.
8. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
9. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
10. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
11. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
12. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
13. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
14. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
15. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
16. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
17. "Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
18. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;

- f. A commercial or contract painting operation;
- g. Electrical services;
- h. A refrigeration unit on a truck;
- i. A power-take-off unit; and
- j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

- 19. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.
- 20. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
- 21. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
- 22. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.
- 23. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
- 24. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.
- 25. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or

subject to restricted travel due to construction, reconstruction, repair, or maintenance.

26. "Rack" means a mechanism used to dispense special fuel from a terminal.
27. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
28. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
29. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.
30. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
31. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
32. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.
33. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.
34. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
35. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
36. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers,

"terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.

37. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

(Effective after June 30, 2003 2005) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Agricultural purpose" means the science, art, and business of farming. It includes raising crops, ranching, beekeeping, tree nurseries, agricultural units of colleges and universities, custom combining, manure spreading, and stack moving operations. Fuel used for an agricultural purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include fuel used to operate a licensed motor vehicle.
2. "Commissioner" means the state tax commissioner.
3. "Common carrier" or "contract carrier" means a person involved in the movement of special fuel from a terminal or movement of special fuel imported into this state, who is not an owner of the special fuel.
4. "Consumer" means a user of special fuel including any person purchasing special fuel in this state for use in a licensed motor vehicle; any person importing special fuel into this state or purchasing special fuel in this state for use as heating fuel, or for an agricultural, industrial, or railroad purpose; or any person purchasing special fuel in this state for use in recreational or any other types of motor vehicles. It does not include a person importing or purchasing special fuel for resale.
5. "Destination state" means any state, territory, foreign country, or sovereign nation to which special fuel is directed for delivery into a storage facility, receptacle, container, or any other type of transportation equipment, for the purposes of resale or use.
6. "Director" means the director of the department of transportation.
7. "Distributor" means a person, other than a retailer, who acquires special fuel from a refiner or supplier for subsequent wholesale distribution in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
8. "Dyed special fuel" means special fuel to which an indelible dye meeting United States environmental protection agency and internal revenue service regulations has been added before or upon withdrawal at a terminal or refinery rack.
9. "Export" means the delivery of special fuel across the boundaries of this state from a place of origin in this state by or for a refiner, supplier, or distributor.
10. "Exporter" means a refiner, supplier, or distributor who exports special fuel out of this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.

11. "Gallon" means a United States gallon [3.79 liters] measured on a gross volume basis.
12. "Gross volume" means measurement in United States gallons [3.79 liters] without temperature or barometric adjustments.
13. "Heating fuel use" means use of special fuel to heat homes, private and public office buildings, or private and public commercial buildings or use of special fuel in stoves or burners or for any other heating purposes.
14. "Highway purpose" means any use of special fuel in any motor vehicle in any phase of construction, reconstruction, repair, or maintenance of public roads or highways, but does not include that special fuel used for heating of oils, gravel, bituminous mixture, or in any equipment used in the preparation of any materials to be used on any type of road or highway surfacing.
15. "Import" means the delivery of special fuel across the boundaries of this state from a place of origin outside this state by a refiner, supplier, or distributor.
16. "Importer" means a refiner, supplier, or distributor who imports special fuel into this state in bulk or transport load by truck, railcar, or in a barrel, drum, or other receptacle.
17. "Industrial purpose" means:
 - a. A manufacturing, warehousing, or loading dock operation;
 - b. Construction;
 - c. Sand and gravel processing;
 - d. Well drilling, well testing, or well servicing;
 - e. Maintenance of business premises, golf courses, or cemeteries;
 - f. A commercial or contract painting operation;
 - g. Electrical services;
 - h. A refrigeration unit on a truck;
 - i. A power-take-off unit; and
 - j. Other similar business activity.

Fuel used for an industrial purpose includes fuel used in a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion. It does not include heating fuel, fuel used for an agricultural purpose, fuel used for a railroad purpose, or fuel used to operate a licensed motor vehicle.

18. "Interstate motor carrier" means any person importing special fuel into this state in the fuel supply tank or tanks of any motor vehicle or combination of vehicles used, designed, or maintained for transportation

of persons or property; and having two axles and a gross weight exceeding twenty-six thousand pounds [1179.3401 kilograms]; or having three or more axles regardless of weight; is used in combination when the weight of such combination exceeds twenty-six thousand pounds [1179.3401 kilograms] gross vehicle weight. In the case of motor vehicles that are leased or rented, the interstate motor carrier means the lessee or renter unless the director has designated the lessor, renter, or some other person as the interstate motor carrier.

19. "Licensed motor vehicle" means any motor vehicle licensed for operation upon public roads or highways, but does not include a vehicle with a permanently mounted manure spreader or stack moving unit.
20. "Motor vehicle" means a vehicle, engine, or machine, movable or immovable, operated in whole or in part by internal combustion using one or more of the special fuels defined in this chapter but does not include aircraft.
21. "Person" means every individual, partnership, firm, association, joint venture, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit.
22. "Physical inventory reading" means a measurement of special fuel available for distribution in a terminal, an underground storage tank, an aboveground storage tank, or in a tank wagon, bulk delivery vehicle, railcar, barrel, drum, or other receptacle.
23. "Position holder" means a person holding an inventory position of special fuel in a terminal as reflected on the records of the terminal operator, a person holding the inventory position when that person has a contractual agreement with the terminal operator for the use of storage facilities or terminaling services at a terminal, and a terminal operator who owns special fuel in a terminal.
24. "Public road or highway" means every way or place generally open to the use of the public as a matter of right, for the purpose of motor vehicle travel, notwithstanding that it may be temporarily closed or subject to restricted travel due to construction, reconstruction, repair, or maintenance.
25. "Rack" means a mechanism used to dispense special fuel from a terminal.
26. "Railroad purpose" means the operation of railroad locomotives and the construction, reconstruction, repair, and maintenance of railroads. Fuel used for a railroad purpose includes fuel used to operate a railroad locomotive, and fuel used in a motor vehicle for purposes of construction, reconstruction, repair, and maintenance of railroads. It does not include fuel used in a licensed motor vehicle.
27. "Refiner" means a person who produces, manufactures, or refines special fuels in this state.
28. "Retail location" means a site at which special fuel is dispensed through a pump from an underground or aboveground storage unit into the supply tank of a motor vehicle.

29. "Retailer" means a person who acquires special fuel from a supplier or distributor for resale to a consumer at a retail location.
30. "Sale" means, with respect to special fuel, the transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means, for a consideration.
31. "Special fuel" means all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles and includes compressed natural gas, kerosene, liquefied petroleum gases, all gases and liquids which meet the specifications as determined by the state department of health pursuant to the provisions of section 19-10-10, as well as all liquids determined by the state department of health to be heating oil pursuant to the provisions of section 19-10-10, except that it does not include either motor vehicle fuels as defined in section 57-43.1-01, aviation fuels as defined in section 57-43.3-01, or antifreeze as defined by section 19-16.1-02.
32. "Supplier" means a refiner who distributes special fuel from a terminal in this state, or a person who acquires special fuel by pipeline from a state, territory, or possession of the United States or from a foreign country, for storage at and distribution from a terminal, or a person who acquires special fuel by truck or railcar for storage at and distribution from a terminal in this state.
33. "Taxpayer" means a refiner, supplier, distributor, importer, exporter, terminal operator, or retailer.
34. "Terminal" means a special fuel storage and distribution facility that is supplied by a refinery or pipeline and from which the special fuel may be removed from the rack.
35. "Terminal operator" means a person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If a terminal is owned by coventurers, "terminal operator" means the person appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
36. "Wholesale distribution" means the sale of special fuel by a supplier or distributor.

SECTION 4. AMENDMENT. Section 57-43.2-02 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-02. (Contingent effective date - See note - Effective through June 30, 2003 2005) Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel. The tax under this subsection is reduced by one and five-hundredths cents per gallon [3.79 liters] on the sale or delivery of diesel fuel that contains at least two percent biodiesel fuel by weight.

2. A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth 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. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

(Effective after June 30, 2003 ~~2005~~) Tax imposed.

1. Except as otherwise provided in this chapter, an excise tax of twenty-one cents per gallon [3.79 liters] is imposed on the sale or delivery of all special fuel sold or used in this state. For the purpose of determining the tax upon compressed natural gas under this section, one hundred twenty cubic feet [3.40 cubic meters] of compressed natural gas is equal to one gallon [3.79 liters] of other special fuel.
2. A supplier, distributor, or retailer shall remit the tax imposed by this section on special fuel used and on direct sales of special fuel to a customer.
3. The tax imposed by this section does not apply on sales by a supplier to another supplier, on a sale by a supplier to a distributor, on a sale by a distributor to another distributor, on a sale by a distributor to a retailer, on an export, or on a sale to an exempt consumer.
4. The person required to remit the tax imposed by this section shall pass the tax on to the customer.
5. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth 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. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.

6. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 5. AMENDMENT. Section 57-43.2-03 of the North Dakota Century Code is amended and reenacted as follows:

57-43.2-03. (Contingent effective date - See note - Effective through June 30, ~~2003~~ 2005) Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02. The tax under this subsection is reduced to one and nine-tenths percent on all sales of diesel fuel that contains at least two percent biodiesel fuel by weight.
2. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
3. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
4. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.
5. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt consumer.
6. The person required to remit the tax imposed by this section shall pass the tax on to the consumer.
7. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth 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. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
8. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

(Effective after June 30, 2003 2005) Special excise tax levied.

1. Except as otherwise provided in this chapter, a special excise tax of two percent is imposed on all sales of special fuels, which are exempted from the tax imposed under section 57-43.2-02.
2. A consumer importing special fuel into this state, for a purpose for which the special fuel is taxable under this section, is liable for the tax. The commissioner shall collect the tax from the consumer importing the fuel.
3. If any fuel subject to tax by this section was subject to tax in any other state or its political subdivisions, the tax in this section applies but at a rate measured by the difference between the rate imposed in this section and the rate imposed by the other state or its political subdivisions. If the tax imposed by the other state or its political subdivisions is the same or greater than the tax imposed by this section, no tax is due.
4. An invoice, sales ticket, or other sales document issued or created covering a sale taxable under this section must identify the consumer to whom the sale was made, specify the purpose for which the special fuel was sold, and specify whether the fuel was dyed for tax exemption purposes.
5. The tax imposed by this section does not apply on a sale by a supplier to another supplier, a sale by a supplier to a distributor, a sale by a distributor to another distributor, a sale by a distributor to a retailer, an export, or a sale to an exempt consumer.
6. The person required to remit the tax imposed by this section shall pass the tax on to the consumer.
7. The person required to remit the tax imposed by this section shall pay the tax to the commissioner by the twenty-fifth day of the calendar month after the month during which the special fuel was sold or used by the person. When the twenty-fifth 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. When payment is made by mail, the payment is timely if the envelope containing the payment is postmarked by the United States postal service or other postal carrier service before midnight of the due date.
8. The commissioner shall pay over all of the money received during each calendar month to the state treasurer.

SECTION 6. EFFECTIVE DATE. Sections 1, 3, 4, and 5 of this Act are effective on the first day of the first month after the tax commissioner certifies to the governor and the office of the legislative council that a refining facility is operational in this state which has a production capacity of at least ten million gallons [37854000 liters] of biodiesel per year. Section 2 of this Act is effective for taxable years beginning after December 31, 2002.

SECTION 7. EXPIRATION DATE. Sections 1, 3, 4, and 5 of this Act are effective for taxable events occurring from the effective date of this Act through June 30, 2005, and are thereafter ineffective.

Approved April 21, 2003
Filed April 21, 2003

CHAPTER 532

SENATE BILL NO. 2100

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

INCOME TAX ASSESSMENTS

AN ACT to amend and reenact subsection 9 of section 57-38-38 of the North Dakota Century Code, relating to the time period for the assessment of additional income tax; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 57-38-38 of the North Dakota Century Code is amended and reenacted as follows:

9. Except for an amended return required to be filed under section 57-38-34.4, if a person files an amended state income tax return within the time periods prescribed in subsections 1 ~~and 2, and 3~~ or subsection 1 of section 57-38-40, the tax commissioner has two years after the amended state income tax return is filed to audit the state income tax return and assess any additional state income tax ~~found to be due~~ attributable to the changes or corrections on the amended return, even though other time periods prescribed in this section for the assessment of tax may have expired. The provisions of this subsection do not limit or restrict any other time period prescribed in this section for the assessment of tax that has not expired at the end of the two-year period prescribed in this subsection.

SECTION 2. EFFECTIVE DATE. This Act is effective for amended returns filed after December 31, 2002.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 533**HOUSE BILL NO. 1108**
(Finance and Taxation Committee)
(At the request of the Tax Commissioner)**PAYROLL SERVICE PROVIDER TAX WITHHOLDING**

AN ACT to create and enact a new subsection to section 57-38-60 of the North Dakota Century Code, relating to the filing of income tax withholding returns and income tax withholding payments by payroll service providers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-38-60 of the North Dakota Century Code is created and enacted as follows:

A payroll service provider authorized under the provisions of this chapter to file and remit withholding taxes on behalf of an employer shall file the returns required by subsections 2, 3, and 4, and pay any tax due, by electronic data interchange or other electronic media as determined by the commissioner. As used in this subsection, a "payroll service provider" means a person that, for federal tax purposes, electronically processes and transmits an employer's withholding returns and taxes, including wage information returns. The commissioner may waive, upon a showing of good cause, the requirement to file a return or pay the tax electronically.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 534**SENATE BILL NO. 2102**

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

RENTAL MOTOR VEHICLE SURCHARGES

AN ACT to amend and reenact subsection 2 of section 57-39.2-03.7 of the North Dakota Century Code, relating to the surcharge on rental motor vehicles.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 57-39.2-03.7 of the North Dakota Century Code is amended and reenacted as follows:

2. On February fifteenth of each year, a company that collects surcharges under this section shall file a report with the commissioner stating the total amount of excise taxes paid under chapter 57-40.3 on ~~its~~ the rental vehicles for the preceding calendar year and the total amount of rental motor vehicle revenues earned on rentals in this state for the preceding calendar year. All surcharge revenues collected during the calendar year by the company in excess of the total amount of excise taxes paid under chapter 57-40.3 during the calendar year by the company on rental motor vehicles must be remitted to the commissioner with the report and considered sales tax collections under this chapter.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 535**SENATE BILL NO. 2337**

(Senators Thane, Krauter, Wardner)

(Representatives Glassheim, N. Johnson, R. Kelsch)

LODGING TAX FOR LEWIS AND CLARK PROMOTION

AN ACT to create and enact a new section to chapter 57-39.2 of the North Dakota Century Code, relating to an additional sales tax on lodging for promotion of the Lewis and Clark bicentennial celebration; 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:

SECTION 1. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Separate and additional sales tax on lodging. A separate and additional tax of one percent is imposed upon the gross receipts of retailers from all sales at retail within this state from the leasing or renting of hotel, motel, or tourist court accommodations for periods of fewer than thirty consecutive days. The tax imposed under this section does not apply to leasing or renting of bed and breakfast accommodations licensed under chapter 23-09.1. Revenue from the tax imposed by this section must not be considered to be a portion of sales, use, and motor vehicle excise tax collections under section 57-39.2-26.1.

SECTION 2. APPROPRIATION - DEPARTMENT OF COMMERCE - TOURISM DIVISION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$2,900,000, or so much of the sum as may be necessary, to the department of commerce division of tourism for the purpose of defraying the expenses of out-of-state marketing relating to the Lewis and Clark bicentennial celebration, for the biennium beginning July 1, 2003, and ending June 30, 2005. The amount spent pursuant to this section may not exceed the amount of revenue generated from the separate and additional tax imposed under section 1 of this Act, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 3. EFFECTIVE DATE - EXPIRATION DATE. Section 1 of this Act is effective for taxable events occurring after June 30, 2003, and before July 1, 2007, and is thereafter ineffective.

Approved April 14, 2003

Filed April 14, 2003

CHAPTER 536

HOUSE BILL NO. 1328 (Representatives Clark, Pietsch, Porter) (Senators Brown, Wardner)

RAFFLE PRIZE SALES AND EXCISE TAX EXEMPTION

AN ACT to create and enact 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 a sales, use, and motor vehicle excise tax exemption for the acquisition by a charitable organization of property to be awarded as a raffle prize; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵¹ **SECTION 1.** 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 tangible personal property purchased by a charitable organization to be awarded as a prize in a raffle conducted in accordance with law if the winner of the tangible personal property will be subject to sales or use taxes upon receiving the property.

²⁵² **SECTION 2.** A new subsection to section 57-40.3-04 of the North Dakota Century Code is created and enacted as follows:

Any motor vehicle acquired by a charitable organization to be awarded as a prize in a raffle conducted in accordance with law if upon registration the motor vehicle will be subject to taxes under this chapter or the motor vehicle is registered in another state.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable events occurring after June 30, 2003.

Approved March 7, 2003
Filed March 7, 2003

²⁵¹ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 21 of House Bill No. 1426, chapter 96, section 6 of Senate Bill No. 2096, chapter 539, section 7 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, section 10 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.

²⁵² Section 57-40.3-04 was also amended by section 1 of House Bill No. 1205, chapter 540.

CHAPTER 537

HOUSE BILL NO. 1025

(Legislative Council)

(Advisory Commission on Intergovernmental Relations)

STATE AID DISTRIBUTION FUND ALLOCATION

AN ACT to amend and reenact section 57-39.2-26.1 of the North Dakota Century Code, relating to the allocation of sales, use, and motor vehicle excise tax collections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 57-39.2-26.1 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-26.1. (Effective through July 31, 2003) Allocation of revenues among political subdivisions. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections, equal to forty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.
 - a. Ten and four-tenths percent of the amount must be allocated among counties with a population of one hundred thousand or more, based upon the proportion each such county's population bears to the total population of all such counties.
 - b. Eighteen percent of the amount must be allocated among counties with a population of forty thousand or more but fewer than one hundred thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - c. Twelve percent of the amount must be allocated among counties with a population of twenty thousand or more but fewer than forty thousand, based upon the proportion each such county's population bears to the total population of all such counties.
 - d. Fourteen percent of the amount must be allocated among counties with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such county's population bears to the total population of all such counties.

- e. Twenty-three and two-tenths percent of the amount must be allocated among counties with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such county's population bears to the total population of all such counties.
- f. Eighteen and three-tenths percent of the amount must be allocated among counties with a population of two thousand five hundred or more but fewer than five thousand, based upon the proportion each such county's population bears to the total population of all such counties.
- g. Four and one-tenth percent of the amount must be allocated among counties with a population of fewer than two thousand five hundred, based upon the proportion each such county's population bears to the total population of all such counties.

A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison diversion conservancy district, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period as provided in this subsection.
 - a. Fifty-three and nine-tenths percent of the amount must be allocated among cities with a population of twenty thousand or more, based upon the proportion each such city's population bears to the total population of all such cities.
 - b. Sixteen percent of the amount must be allocated among cities with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - c. Four and nine-tenths percent of the amount must be allocated among cities with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - d. Thirteen and one-tenth percent of the amount must be allocated among cities with a population of one thousand or more but fewer than five thousand, based upon the proportion each such city's population bears to the total population of all such cities.

- e. Six and four-tenths percent of the amount must be allocated among cities with a population of five hundred or more but fewer than one thousand, based upon the proportion each such city's population bears to the total population of all such cities.
- f. Three and five-tenths percent of the amount must be allocated among cities with a population of two hundred or more but fewer than five hundred, based upon the proportion each such city's population bears to the total population of all such cities.
- g. Two and two-tenths percent of the amount must be allocated among cities with a population of fewer than two hundred, based upon the proportion each such city's population bears to the total population of all such cities.

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

3. The population figures used for the allocation of revenues to counties and cities under subsections 1 and 2 must be the population figures determined by the 1990 federal decennial census unless an official special census was conducted between the 1990 federal decennial census and January 1, 1997.

(Effective after July 31, 2003) Allocation of revenues among political subdivisions. Notwithstanding any other provision of law, a portion of sales, use, and motor vehicle excise tax collections, equal to forty percent of an amount determined by multiplying the quotient of one percent divided by the general sales tax rate, that was in effect when the taxes were collected, times the net sales, use, and motor vehicle excise tax collections under chapters 57-39.2, 57-40.2, and 57-40.3 must be deposited by the state treasurer in the state aid distribution fund. The state tax commissioner shall certify to the state treasurer the portion of sales, use, and motor vehicle excise tax net revenues that must be deposited in the state aid distribution fund as determined under this section. Revenues deposited in the state aid distribution fund are provided as a standing and continuing appropriation and must be allocated as follows:

1. Fifty-three and seven-tenths percent of the revenues must be allocated to counties in the first month after each quarterly period as provided in this subsection.
 - a. ~~Ten and four-tenths~~ Sixty-four percent of the amount must be allocated among the seventeen counties with ~~a~~ the greatest population of ~~one hundred thousand or more~~, in the following manner:
 - (1) Thirty-two percent of the amount must be allocated equally among the counties; and

- (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.
- b. ~~Eighteen~~ Thirty-six percent of the amount must be allocated among all counties with a population of forty thousand or more but fewer than one hundred thousand, excluding the seventeen counties with the greatest population, in the following manner:
 - (1) Forty percent of the amount must be allocated equally among the counties; and
 - (2) The remaining amount must be allocated based upon the proportion each such county's population bears to the total population of all such counties.
- e. ~~Twelve percent of the amount must be allocated among counties with a population of twenty thousand or more but fewer than forty thousand, based upon the proportion each such county's population bears to the total population of all such counties.~~
- d. ~~Fourteen percent of the amount must be allocated among counties with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such county's population bears to the total population of all such counties.~~
- e. ~~Twenty-three and two-tenths percent of the amount must be allocated among counties with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such county's population bears to the total population of all such counties.~~
- f. ~~Eighteen and three-tenths percent of the amount must be allocated among counties with a population of two thousand five hundred or more but fewer than five thousand, based upon the proportion each such county's population bears to the total population of all such counties.~~
- g. ~~Four and one-tenth percent of the amount must be allocated among counties with a population of fewer than two thousand five hundred, based upon the proportion each such county's population bears to the total population of all such counties.~~

A county shall deposit all revenues received under this subsection in the county general fund. Each county shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, townships, rural fire protection districts, rural ambulance districts, soil conservation districts, county recreation service districts, county hospital districts, the Garrison diversion conservancy district, the southwest water authority, and other taxing districts within the county, excluding school districts, cities, and taxing districts within cities. The share of the county allocation under this subsection to be distributed to a township must be equal to the percentage of the county share of state aid distribution fund allocations that township received during calendar year 1996. The governing boards of the county and township may agree to a different distribution.

2. Forty-six and three-tenths percent of the revenues must be allocated to cities in the first month after each quarterly period as provided in this subsection.
 - a. ~~Fifty-three and nine-tenths~~ Nineteen and four-tenths percent of the amount must be allocated among cities with a population of eighty thousand or more, based upon the proportion each city's population bears to the total population of all such cities.
 - b. Thirty-four and five-tenths percent of the amount must be allocated among cities with a population of twenty thousand or more but fewer than eighty thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - b. c. Sixteen percent of the amount must be allocated among cities with a population of ten thousand or more but fewer than twenty thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - e. d. Four and nine-tenths percent of the amount must be allocated among cities with a population of five thousand or more but fewer than ten thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - e. e. Thirteen and one-tenth percent of the amount must be allocated among cities with a population of one thousand or more but fewer than five thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - e. f. Six and ~~four-tenths~~ one-tenth percent of the amount must be allocated among cities with a population of five hundred or more but fewer than one thousand, based upon the proportion each such city's population bears to the total population of all such cities.
 - f. g. Three and ~~five-tenths~~ four-tenths percent of the amount must be allocated among cities with a population of two hundred or more but fewer than five hundred, based upon the proportion each such city's population bears to the total population of all such cities.
 - e. h. Two and ~~two-tenths~~ six-tenths percent of the amount must be allocated among cities with a population of fewer than two hundred, based upon the proportion each such city's population bears to the total population of all such cities.

A city shall deposit all revenues received under this subsection in the city general fund. Each city shall reserve a portion of its allocation under this subsection for further distribution to, or expenditure on behalf of, park districts and other taxing districts within the city, excluding school districts. The share of the city allocation under this subsection to be distributed to a park district must be equal to the percentage of the city share of state aid distribution fund allocations that park district received during calendar year 1996, up to a maximum of thirty percent. The governing boards of the city and park district may agree to a different distribution.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 538

SENATE BILL NO. 2095

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

STREAMLINED SALES AND USE TAX AGREEMENT ADOPTION

AN ACT to create and enact chapter 57-39.4 of the North Dakota Century Code, relating to adoption of the streamlined sales and use tax agreement as adopted by member states of the streamlined sales tax project; to repeal chapter 57-39.4 of the North Dakota Century Code, relating to participation in multistate discussions and entering the streamlined sales and use tax agreement; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 57-39.4 of the North Dakota Century Code is created and enacted 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 III, which is adopted as set out in this chapter.

57-39.4-02. (301) State level administration. Each member state shall provide state level administration of sales and use taxes. The state level administration may be performed by a member state's tax commission, department of revenue, or any other single entity designated by state law. Sellers are only required to register with, file returns with, and remit funds to the state level authority. Each member state shall provide for collection of any local taxes and distribution of them to the appropriate taxing jurisdictions. Each member state shall conduct, or authorize others to conduct on its behalf, all audits of the sellers registered under the agreement for that state's tax and the tax of its local jurisdictions, and local jurisdictions shall not conduct independent sales or use tax audits of sellers registered under the agreement.

57-39.4-03. (302) State and local tax bases. Through December 31, 2005, if a member state has local jurisdictions that levy a sales or use tax, all local jurisdictions in the state shall have a common tax base. After December 31, 2005, the tax base for local jurisdictions shall be identical to the state tax base unless otherwise prohibited by federal law. This section does not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

57-39.4-04. (303) Seller registration. Each member state shall participate in an on-line sales and use tax registration system in cooperation with the other member states. Under this system:

1. A seller registering under the agreement is registered in each of the member states.

2. The member states agree not to require the payment of any registration fees or other charges for a seller to register in a state in which the seller has no legal requirement to register.
3. A written signature from the seller is not required.
4. An agent may register a seller under uniform procedures adopted by the member states.
5. A seller may cancel its registration under the system at any time under uniform procedures adopted by the governing board. Cancellation does not relieve the seller of its liability for remitting to the proper states any taxes collected.

57-39.4-05. (304) Notice for state tax changes.

1. Each member state shall lessen the difficulties faced by sellers when there is a change in a state sales or use tax rate or base by making a reasonable effort to do all of the following:
 - a. Provide sellers with as much advance notice as practicable of a rate change.
 - b. Limit the effective date of a rate change to the first day of a calendar quarter.
 - c. Notify sellers of legislative changes in the tax base and amendments to sales and use tax rules and regulations.
2. Failure of a seller to receive notice or failure of a member state to provide notice or limit the effective date of a rate change shall not relieve the seller of its obligation to collect sales or use taxes for that member state.

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 is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller 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 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.
7. Participate with other member states in the development of an address-based system for assigning taxing jurisdictions. The system must meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act [4 U.S.C. Sec. 119]. The governing board may allow a member state to require sellers that register under this agreement to use an address-based system provided by that member state. If any member state develops an address-based assignment system pursuant to the Mobile Telecommunications Sourcing Act, a seller may use that system in place of the system provided for in subsection 6.

57-39.4-07. (306) Relief from certain liability. Each member state shall relieve sellers and certified service providers 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 member state that provides an address-based system for assigning taxing jurisdictions under subsection 7 of section 57-39.4-06 or under the federal Mobile Telecommunications Sourcing Act will not be required to provide liability relief for errors resulting from the reliance on the information provided by the member state under subsection 6 of section 57-39.4-06.

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.
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 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.

57-39.4-09. (308) State and local tax rates.

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.
2. A member state that has local jurisdictions that levy a sales or use tax shall not have more than one local sales tax rate or more than one local use tax rate per local jurisdiction. If the local jurisdiction levies both a sales tax and use tax, the local rates must be identical.
3. The provisions of this section do not apply to sales or use taxes levied on 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.

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.
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, as set out in section 57-39.4-16, shall be sourced in accordance with section 57-39.4-15.

57-39.4-11. (310) General sourcing rules.

1. The retail sale, excluding lease or rental, of a product shall be sourced as follows:
 - a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
 - b. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser, or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.
 - c. When subdivisions a and b do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
 - d. When subdivisions a, b, and c do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
 - e. When none of the previous rules of subdivisions a, b, c, and d apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.
2. The lease or rental of tangible personal property, other than property identified in subsection 3 or 4, shall be sourced as follows:
 - a. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection 1. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

- b. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection 1.
 - c. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.
 3. The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in subsection 4, shall be sourced as follows:
 - a. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.
 - b. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection 1.
 - c. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis or on the acquisition of property for lease.
 4. The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection 1, notwithstanding the exclusion of lease or rental in subsection 1. "Transportation equipment" means any of the following:
 - a. Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.
 - b. Trucks and truck-tractors with a gross vehicle weight rating of 10,001 pounds [4535.92 kilograms] or greater, trailers, semitrailers, or passenger buses that are:
 - (1) Registered through the international registration plan; and
 - (2) Operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.
 - c. Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.
 - d. Containers designed for use on and component parts attached or secured on the items set forth in subdivisions a, b, and c.

57-39.4-12. (311) General sourcing definitions. For the purposes of subsection 1 of section 57-39.4-11, the terms "receive" and "receipt" mean:

1. Taking possession of tangible personal property;
2. Making first use of services; or
3. Taking possession or making first use of digital goods, whichever comes first. The terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

57-39.4-13. (312) Multiple points of use. Notwithstanding the provisions of section 57-39.4-11, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the seller in conjunction with its purchase a form disclosing this fact, called a multiple points of use exemption form.

1. Upon receipt of the multiple points of use exemption form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.
2. A purchaser delivering the multiple points of use exemption form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of the consummation of the sale.
3. The multiple points of use exemption form will remain in effect for all future sales by the seller to the purchaser, except as to the subsequent sale's specific apportionment that is governed by the principle of subsection 2 and the facts existing at the time of the sale, until it is revoked in writing.
4. A holder of a direct pay permit shall not be required to deliver a multiple points of use exemption form to the seller. A direct pay permit holder shall follow the provisions of subsection 2 in apportioning the tax due on a digital good or a service that will be concurrently available for use in more than one jurisdiction.

57-39.4-14. (313) Direct mail sourcing.

1. Notwithstanding section 57-39.4-11, a purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients.
 - a. Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

- b. Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction in which the seller has collected tax pursuant to the delivery information provided by the purchaser.
2. If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information, as required by subsection 1, the seller shall collect the tax according to subdivision e of subsection 1 of section 57-39.4-11. Nothing in this subsection shall limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.
3. If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser shall not be required to provide a direct mail form or delivery information to the seller.

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 is sourced in accordance with section 57-39.4-11. However, in the case of a sale of mobile telecommunications services that is a prepaid telecommunications services, 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.

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. "Call-by-call basis" means any method of charging for telecommunications services in which the price is measured by individual calls.
3. "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
4. "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. "Customer channel termination point" means the location where the customer either inputs or receives the communications.
6. "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. "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. "Mobile telecommunications service" means the same as that term is defined in section 124(5) of Public Law 106-252, Mobile Telecommunications Sourcing Act.
9. "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. "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 that would be a prepaid calling service except it is not exclusively telecommunications services.
11. "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.
12. "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.
13. "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.

57-39.4-17. (316) Enactment of exemptions.

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.
2. A member state may enact an entity-based or a use-based exemption 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 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.
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.

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.

2. Each member state shall relieve sellers that follow the requirements of this section from any 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 solicits purchasers to participate in the unlawful claim of an exemption.

57-39.4-19. (318) Uniform tax returns. Each member state shall:

1. Require that only one tax return for each taxing period for each seller be filed for the member state and all the taxing jurisdictions within the member state.
2. Require that returns be due no sooner than the twentieth day of the month following the month in which the transaction occurred.
3. Allow any model 1, model 2, or model 3 seller to submit its sales and use tax returns in a simplified format that does not include more data fields than permitted by the governing board. A member state may require additional informational returns to be submitted not more frequently than every six months under a staggered system developed by the governing board.
4. Allow any seller that is registered under the agreement, which does not have a legal requirement to register in the member state, and is not a model 1, model 2, or model 3 seller, to submit its sales and use tax returns as follows:
 - a. Upon registration, a member state shall provide to the seller the returns required by that state.
 - b. A member state may require a seller to file a return any time within one year of the month of initial registration and future returns may be required on an annual basis in succeeding years.
 - c. In addition to the returns required in subdivision b, a member state may require sellers to submit returns in the month following any month in which they have accumulated state and local tax funds for the state in the amount of one thousand dollars or more.
 - d. Participate with other member states in developing a more uniform sales and use tax return that, when completed, would be available to all sellers.
 - e. Require, at each member state's discretion, all model 1, model 2, and model 3 sellers to file returns electronically. It is the intent of the member states that all member states have the capability of receiving electronically filed returns by January 1, 2004.

57-39.4-20. (319) Uniform rules for remittance of funds. Each member state shall:

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 amount of the additional remittance shall be determined through a calculation method rather than actual collections and shall not require the filing of an additional return.
2. Require, at each member state's discretion, all remittances from sellers under model 1, model 2, and model 3 to be remitted electronically.
3. Allow for electronic payments by both automated clearinghouse credit and automated clearinghouse debit.
4. Provide an alternative method for making same day payments if an electronic funds transfer fails.
5. Provide that if a due date falls on a legal banking holiday in a member state, the taxes are due to that state on the next succeeding business day.
6. Require that any data that accompanies a remittance be formatted using uniform tax type and payment type codes approved by the governing board.

57-39.4-21. (320) Uniform rules for recovery of bad debts. Each member state shall use the following to provide a deduction for bad debts to a seller. To the extent a member state provides a bad debt deduction to any other party, the same procedures will apply. Each member state shall:

1. Allow a deduction from taxable sales for bad debts. Any deduction taken that is attributed to bad debts shall not include interest.
2. Utilize the federal definition of "bad debt" in 26 U.S.C. 166 as the basis for calculating bad debt recovery. However, the amount calculated pursuant to 26 U.S.C. 166 shall be adjusted to exclude financing charges or interest, sales or use taxes charged on the purchase price, uncollectible amounts on property that remain in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, and repossessed property.
3. Allow bad debts to be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subsection, a claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

4. Require that, if a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.
5. Provide that, when the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the member state's otherwise applicable statute of limitations for refund claims. However, the statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.
6. When filing responsibilities have been assumed by a certified service provider, allow the certified service provider to claim, on behalf of the seller, any bad debt allowance provided by this section. The certified service provider must credit or refund the full amount of any bad debt allowance or refund received to the seller.
7. Provide that, for the purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon and secondly to interest, service charges, and any other charges.
8. When the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states, permit the allocation.

57-39.4-22. (321) Confidentiality and privacy protections under model 1.

1. The purpose of this section is to set forth the member states' policy for the protection of the confidentiality rights of all participants in the system and of the privacy interests of consumers who deal with model 1 sellers.
2. As used in this section, the term "confidential taxpayer information" means all information that is protected under a member state's laws, regulations, and privileges, the term "personally identifiable information" means information that identifies a person, and the term "anonymous data" means information that does not identify a person.
3. The member states agree that a fundamental precept in model 1 is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.
4. The governing board may certify a certified service provider only if that certified service provider certifies that:
 - a. Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;
 - b. That personally identifiable information is only used and retained to the extent necessary for the administration of model 1 with respect to exempt purchasers;

- c. It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the official web site of the certified service provider;
 - d. Its collection, use, and retention of personally identifiable information will be limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and
 - e. It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.
5. Each member state shall provide public notification to consumers, including their exempt purchasers, of the state's practices relating to the collection, use, and retention of personally identifiable information.
6. When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subdivision d of subsection 4, such information shall no longer be retained by the member states.
7. When personally identifiable information regarding an individual is retained by or on behalf of a member state, such state shall provide reasonable access by such individual to the individual's own information in the state's possession and a right to correct any inaccurately recorded information.
8. If anyone other than a member state, or a person authorized by that state's law or the agreement, seeks to discover personally identifiable information, the state from which the information is sought should make a reasonable and timely effort to notify the individual of such request.
9. This privacy policy is subject to enforcement by member states' attorneys general or other appropriate state government authority.
10. Each member states' laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, the agreement does not enlarge or limit the member states' authority to:
 - a. Conduct audits or other review as provided under the agreement and state law.
 - b. Provide records pursuant to a member state's freedom of information act, disclosure laws with governmental agencies, or other regulations.
 - c. Prevent, consistent with state law, disclosures of confidential taxpayer information.

- d. Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the internal revenue service.
 - e. Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.
11. This privacy policy does not preclude the governing board from certifying a certified service provider whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the agreement.

57-39.4-23. (322) Sales tax holidays.

1. If a member state allows for temporary exemption periods, commonly referred to as sales tax holidays, the member state shall:
 - a. Not apply an exemption after December 31, 2003, unless the items to be exempted are specifically defined in the agreement and the exemptions are uniformly applied to state and local sales and use taxes.
 - b. Provide notice of the exemption period at least sixty days' prior to the first day of the calendar quarter in which the exemption period will begin.
2. A member state may establish a sales tax holiday that utilizes price thresholds set by such state and the provisions of the agreement on the use of thresholds shall not apply to exemptions provided by a state during a sales tax holiday. In order to provide uniformity, a price threshold established by a member state for exempt items shall include only items priced below the threshold. A member state shall not exempt only a portion of the price of an individual item during a sales tax holiday.
3. The governing board shall establish procedures to provide uniformity for the administrative issues involved with the implementation of a sales tax holiday. These issues include:
 - a. Treatment of layaway purchases;
 - b. Exempt and nonexempt items that are packaged together;
 - c. Treatment of coupons or discounts;
 - d. Splitting of items normally sold together;
 - e. Treatment of rainchecks;
 - f. Exchanges;
 - g. Shipping and handling charges;
 - h. Service charges;
 - i. Restocking fees; and

- j. Order date and back orders.

57-39.4-24. (323) Caps and thresholds.

1. Each member state shall:
 - a. Not have caps or thresholds on the application of state sales or use tax rates or exemptions that are based on the value of the transaction or item after December 31, 2005. A member state may continue to have caps and thresholds until that date.
 - b. Not have caps that are based on the application of the rates unless the member state assumes the administrative responsibility in a manner that places no additional burden on the retailer.
2. Each member state that has local jurisdictions that levy a sales or use tax shall not place caps or thresholds on the application of local rates or use tax rates or exemptions that are based on the value of the transaction or item after December 31, 2005. A member state may continue to have caps and thresholds until that date.
3. The provisions of this section do not apply to sales or use taxes levied on the retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes or to instances when the burden of administration has been shifted from the retailer.

57-39.4-25. (324) Rounding.

1. After December 31, 2005, each member state shall adopt a rounding algorithm that meets the following criteria:
 - a. Tax computation must be carried to the third decimal place; and
 - b. The tax must be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.
2. Each state shall allow sellers to elect to compute the tax due on a transaction on an item or an invoice basis and shall allow the rounding rule to be applied to the aggregated state and local taxes. No member state shall require a seller to collect tax based on a bracket system.

57-39.4-26. (325) Customer refund procedures.

1. This section applies when a state allows a purchaser to seek a return of over-collected sales or use taxes from the seller.
2. Nothing in this section shall either require a state to provide, or prevent a state from providing, a procedure by which a purchaser may seek a refund directly from the state arising out of sales or use taxes collected in error by a seller from the purchaser. Nothing in this section shall operate to extend any person's time to seek a refund of sales or use taxes collected or remitted in error.
3. This section provides the first course of remedy available to purchasers seeking a return of over-collected sales or use taxes from the seller. A

cause of action against the seller for the over-collected sales or use taxes does not accrue until a purchaser has provided written notice to a seller and the seller has had sixty days to respond. Such notice to the seller must contain the information necessary to determine the validity of the request.

4. In connection with a purchaser's request from a seller of over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller uses either a provider or a system, including a proprietary system, which is certified by the state and has remitted to the state all taxes collected less any deductions, credits, or collection allowances.

57-39.4-27. (326) Direct pay permits. Each member state shall provide for a direct pay authority that allows the holder of a direct pay permit to purchase otherwise taxable goods and services without payment of tax to the supplier at the time of purchase. The holder of the direct pay permit will make a determination of the taxability and then report and pay the applicable tax due directly to the tax jurisdiction. Each state can set its own limits and requirements for the direct pay permit. The governing board shall advise member states when setting state direct pay limits and requirements and shall consider use of the model direct payment permit regulation as developed by the task force on EDI audit and legal issues for tax administration.

57-39.4-28. (327) Library of definitions. Each member state shall utilize common definitions as provided in this section. The terms defined are set out in the library of definitions, in appendix C of the agreement adopted by section 57-39.4-01. A member state shall adhere to the following principles:

1. If a term defined in the library of definitions appears in a member state's sales and use tax statutes or administrative rules or regulations, the member state shall enact or adopt the library definition of the term in its statutes or administrative rules or regulations in substantially the same language as the library definition.
2. A member state shall not use a library definition in its sales or use tax statutes or administrative rules or regulations that is contrary to the meaning of the library definition.
3. Except as specifically provided in section 57-39.4-15 and the library of definitions, a member state shall impose a sales or use tax on all products or services included within each definition or exempt from sales or use tax all products or services within each definition.

57-39.4-29. (328) Taxability matrix.

1. To ensure uniform application of terms defined in the library of definitions, each member state shall complete a taxability matrix adopted by the governing board. The member state's entries in the matrix shall be provided and maintained in a data base that is in a downloadable format approved by the governing board. A member state shall provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the governing board.

2. A member state shall relieve sellers and certified service providers from liability to the member state and its 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 the member state in the taxability matrix.

57-39.4-30. (329) Effective date for rate changes. Each member state shall provide that the effective date of rate changes for services covering a period starting before and ending after the statutory effective date shall be as follows:

1. For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date.
2. For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

SECTION 2. REPEAL. Chapter 57-39.4 of the North Dakota Century Code, as it exists on July 31, 2003, is repealed.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act is effective for taxable events occurring after December 31, 2005.

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 539

SENATE BILL NO. 2096

(Finance and Taxation Committee)

(At the request of the Tax Commissioner)

STREAMLINED SALES AND USE TAX AGREEMENT IMPLEMENTATION

AN ACT to create and enact sections 57-39.2-29, 57-39.2-30, 57-39.2-31, and 57-39.2-32, chapters 57-39.5 and 57-39.6, a new subsection to section 57-40.2-01, and a new subsection to section 57-40.2-02.1 of the North Dakota Century Code, relating to changes necessary to conform North Dakota sales and use tax laws to the streamlined sales and use tax agreement; to amend and reenact subsection 2 of section 11-09.1-05, subsection 16 of section 40-05.1-06, sections 57-01-02.1, 57-39.2-01, and 57-39.2-02.1, subsections 7, 10, 11, 26, and 45 of section 57-39.2-04, sections 57-39.2-04.1, 57-39.2-05, and 57-39.2-08.2, subsection 1 of section 57-39.2-14, subsection 4 of section 57-40.2-01, and subsection 14 of section 57-40.2-04 of the North Dakota Century Code, relating to changes necessary to conform North Dakota sales and use tax laws to the streamlined sales and use tax agreement; to repeal sections 57-39.2-03.2 and 57-39.2-08.3 of the North Dakota Century Code, relating to changes necessary to conform North Dakota sales and use tax laws to the streamlined sales and use tax agreement; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵³ **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, 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

²⁵³ Section 11-09.1-05 was also amended by section 1 of House Bill No. 1246, chapter 87.

section 11-11-55.1 relating to the sixty percent petition requirement for improvements and of section 40-22-18 relating to the barring proceeding for improvement projects. After December 31, 2005, sales and use 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 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.
- d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1.

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, or sales and use taxes in addition to any other taxes imposed by law. After December 31, 2005, sales and use 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 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.
 - d. Must be subject to collection by the tax commissioner under an agreement under section 57-01-02.1.

SECTION 3. 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; and must enter a contract with the tax commissioner are hereby authorized and empowered to enter into contractual agreements whereby giving the tax commissioner has authority to collect any sales or use taxes assessed by such incorporated city or county.
2. ~~It is the duty of the~~ The tax commissioner to shall deposit with the state treasurer all money collected under a contract under this section and ~~to~~ 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 ~~the several~~ the cities or counties the money to which ~~they~~ the cities or counties are entitled under a contract under this section.
3. ~~The agreements entered into~~ Contracts under this section ~~may also~~ shall provide for an agreed amount to be allowed the tax commissioner for services ~~rendered in connection with such collections.~~ Any sums collected for services rendered 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.

SECTION 4. 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. "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.
2. "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. "Commissioner" means the tax commissioner of the state of North Dakota.
4. "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.

5. "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.
6. "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.
7. "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.
- ~~3.~~ 8. a. "Gross receipts" means the total amount of sales of retailers, valued in money, whether received in money or otherwise. Provided, discounts for any purposes allowed and taken on sales are not included, nor is the sale price of property returned by customers when the full sale price is refunded either in cash or by credit. Provided, further, 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 the sales tax imposed by this chapter when sold, will be subject to the motor vehicle excise tax imposed by chapter 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 are not gross receipts. Provided, further, on all sales of retailers, valued in money, when the sales are made under a conditional sales contract, or under other forms of sale wherein the payment of the principal sum is to be extended over a period longer than sixty days from the date of sale that only the portion of the sale amount shall be accounted for, for the purpose of imposition of tax imposed by this chapter, as has actually been received in cash by the retailer during each quarterly period as defined herein. When a farm machine is purchased as a replacement for machinery which

was stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the compensation received for the loss from an insurance company. The purchaser shall provide the seller with a notarized statement from the insurance company verifying that the original farm machine is a total loss and indicating the amount of compensation. The notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed. "Gross receipts" also means, with respect to the leasing or renting of tangible personal property, the amount of consideration, valued in money, whether received in money or otherwise, received from the leasing or renting of only tangible personal property the transfer of title to which has not been subjected to a retail sales tax in this state. For the purpose of this chapter, gross receipts shall also include the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer. 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;
 - (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 the total amount of sales of every clerk, auctioneer, agent, or factor selling tangible personal property owned by any other retailer.
- c. "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.

9. "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.

- 4. 10. "Local governmental unit" means incorporated cities, counties, school districts, and townships.
- 5. 11. "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.
- 12. "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.
- 6. 13. "Relief agency" means the state, any county, city and county, city or district thereof, or an agency engaged in actual relief work.

- 7- 14. "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 ~~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 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.
- 8- 15. "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 flyers, 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.

9. 16. "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.
17. "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.
18. "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, gas, steam, and prewritten computer software.

SECTION 5. 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 and ~~new farm machinery and new irrigation equipment used exclusively for agricultural 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.
- 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 computer software 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; and of new farm machinery and new irrigation equipment used exclusively for agricultural purposes, including the leasing or renting of new farm machinery and new irrigation equipment used exclusively for agricultural purposes within this state to consumers or users.
3. In the case of a contract for the construction of highways, roads, streets, bridges, and buildings for which the bid was submitted prior to December 9, 1986, the contractor receiving the award is liable only for the sales or use tax at the rate of tax in effect on the date the bid was submitted.

²⁵⁴ **SECTION 6. AMENDMENT.** Subsection 7 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

7. Gross receipts from the sale; ~~by any drugstore,~~ of drugs sold under a doctor's prescription.

²⁵⁵ **SECTION 7. AMENDMENT.** Subsection 10 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

²⁵⁴ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 1 of House Bill No. 1328, chapter 536, section 21 of House Bill No. 1426, chapter 96, section 7 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, section 10 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.

²⁵⁵ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 1 of House Bill No. 1328, chapter 536, section 21 of House Bill No. 1426, chapter 96, section 6 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, section 10 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.

10. Gross receipts from the sale of motor vehicles, farm machinery, alcoholic beverages, gasoline, insurance premiums, gaming tickets, or any other article or product, except as otherwise provided, upon which the state of North Dakota imposes a special tax.

²⁵⁶ **SECTION 8. AMENDMENT.** Subsection 11 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

11. Gross receipts from the sale of feed which is fed to poultry or livestock, including breeding stock and wool-bearing stock, for the purpose of producing eggs, milk, meat, fibers, or other products for human consumption and the gross receipts from the sale of feed purchased for the purpose of being fed to draft or fur-bearing animals. The word "feed" as used herein shall be construed to mean and include only salt, grains, hays, tankage, oyster shells, mineral supplements, limestone, molasses, beet pulp, meat and bone scraps, meal, drugs to be used as part of a feed ration, and other generally recognized animal feeds. The term "feed" ~~does not include~~ includes ~~not~~ drugs ~~not~~ used as part of a feed ration, medicants, disinfectants, wormers, tonics, and like items.

²⁵⁷ **SECTION 9. 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, 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.

²⁵⁶ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 1 of House Bill No. 1328, chapter 536, section 21 of House Bill No. 1426, chapter 96, section 6 of Senate Bill No. 2096, chapter 539, section 7 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, section 10 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.

²⁵⁷ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 1 of House Bill No. 1328, chapter 536, section 21 of House Bill No. 1426, chapter 96, section 6 of Senate Bill No. 2096, chapter 539, section 7 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 10 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.

- b. "Mobility-enhancing equipment" means equipment, not including durable medical equipment, 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.
- c. "Prosthetic device" means a replacement, corrective, or supportive device, 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.
- d. "Prosthetic device" and "durable medical equipment" include:
- (1) 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.
 - ~~b.~~ (2) Artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body.
 - ~~c.~~ (3) Artificial teeth sold by a dentist.
 - ~~d.~~ (4) Eyeglasses when especially designed or prescribed by an ophthalmologist, physician, oculist, or optometrist for the personal use of the owner or purchaser.
 - ~~e.~~ (5) Crutches and wheelchairs for the use of disabled persons.
 - ~~f.~~ (6) 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.
 - ~~g.~~ (7) 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.
 - ~~h.~~ (8) Equipment, including manual control units, for attaching to or modifying motorized implements of husbandry for use by a permanently physically disabled person.

- i. (9) Devices and supplies designed or intended for ostomy care and management to include collection devices, colostomy irrigation equipment and supplies, skin barriers or skin protectors, and other supplies especially designed for use of ostomates.
- j. (10) Supplies, equipment, and devices 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.

²⁵⁸ **SECTION 10. AMENDMENT.** Subsection 45 of section 57-39.2-04 of the North Dakota Century Code is amended and reenacted as follows:

- 45. Gross receipts from the sale or lease of ~~used~~ farm machinery, farm machinery repair parts, or ~~used~~ irrigation equipment used exclusively for agricultural purposes. ~~For purposes of this subsection, "used" means:~~
 - a. ~~Tax under this chapter has been paid on a previous sale;~~
 - b. ~~Originally purchased outside this state and previously owned by a farmer; or~~
 - e. ~~Has been under lease or rental for three years or more.~~

SECTION 11. 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 products ingredients. ~~Gross receipts from sales for human consumption of food and food products including, but not limited to, cereal and cereal products, butter, cheese, milk and milk products, oleomargarine, meat and meat products, poultry and fish and other fresh and saltwater animal products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices and salt, and sugar and sugar products when purchased by consumers for consumption off the premises where purchased, are exempt from the sales tax imposed by this chapter 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. ~~Purchases made with food coupons issued by the United States department of agriculture under the Food Stamp Act of 1977, as amended, are exempt from the tax imposed by this chapter pursuant to the Food Security Act of 1985.~~ For purposes of this section, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or

²⁵⁸ Section 57-39.2-04 was also amended by section 6 of House Bill No. 1243, chapter 454, section 1 of House Bill No. 1328, chapter 536, section 21 of House Bill No. 1426, chapter 96, section 6 of Senate Bill No. 2096, chapter 539, section 7 of Senate Bill No. 2096, chapter 539, section 8 of Senate Bill No. 2096, chapter 539, section 9 of Senate Bill No. 2096, chapter 539, and section 5 of Senate Bill No. 2159, chapter 524.

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 products ingredients" do not include:
 - ~~4.~~ a. ~~Alcoholic beverages or mixed drinks made from alcoholic beverages.~~
 - ~~2.~~ b. ~~Candy or chewing gum.~~
 - ~~3.~~ c. ~~Carbonated beverages~~ Dietary supplements.
 - d. Prepared food.
 - ~~4.~~ e. ~~Beverages commonly referred to as soft~~ Soft drinks containing less than ~~seventy~~ fifty percent fruit juice.
 - ~~5.~~ ~~Powdered drink mixes.~~
 - ~~6.~~ ~~Medicines and preparations in liquid, powdered, granular, tablet, capsule, lozenge, or pill form sold as dietary supplements or adjuncts.~~
 - ~~7.~~ ~~Coffee and coffee substitutes.~~
 - ~~8.~~ ~~Tea.~~
 - ~~9.~~ ~~Cocoa or cocoa products.~~
 - 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.
- 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 food-borne 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.

SECTION 12. AMENDMENT. Section 57-39.2-05 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-05. Credit or refund for taxes paid on worthless accounts and repossessions.

1. Taxes paid on gross receipts represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon subsequent payment of the tax herein provided; provided, that if such accounts are hereafter collected by the retailer, a tax must be paid upon the amount so collected. If a retailer's filing responsibility has been assumed by a certified service provider, the certified provider

may claim on behalf of the retailer any bad debt allowance provided under this section. The certified service provider shall credit or refund to the retailer the full amount of any bad debt allowance or refund received under this section.

2. If a retailer has remitted the sales tax due on the full amount of an installment sales contract rather than on only the installment payments received ~~as provided in subsection 3 of section 57-39.2-04~~, the retailer may deduct as a credit against the retailer's sales tax liability on the next return that the retailer is required to file the amount of sales tax the retailer paid on the installment contract payments which were not made by the purchaser of the merchandise sold under such contract; such credit may be deducted by the retailer regardless of whether or not said retailer has assigned the contract, provided, however, that if the retailer has assigned the contract the retailer must have assigned it subject to an agreement to repurchase the contract in the event of default by the purchaser under the contract or subject to a guarantee that the payments under the contract would be made. In the event such deduction exceeds the amount of sales tax due the state by the retailer in the next regular return, such excess must be allowed as credit against future sales tax due from the retailer. If in any case the credit, or any part of it, cannot be utilized by the retailer because of a discontinuance of a business or for other valid reasons, the amount thereof may be refunded to the retailer.

SECTION 13. AMENDMENT. Section 57-39.2-08.2 of the North Dakota Century Code is amended and reenacted as follows:

57-39.2-08.2. Sales tax to be added to purchase price and be a debt.

1. Except as otherwise provided in subsection 2, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax constitutes a part of such price or charge, is a debt from the consumer or user to the retailer until paid, and is recoverable at law in the same manner as other debts. ~~In adding such tax to the price or charge, retailers shall adopt the following bracket system for the application of the tax:~~

\$0.01 through \$0.15	no tax
\$0.16 through \$0.20	1- tax
\$0.21 through \$0.40	2- tax
\$0.41 through \$0.60	3- tax
\$0.61 through \$0.80	4- tax
\$0.81 through \$1.00	5- tax

~~Each additional \$1.00 - 5- additional tax, or each additional 20- or fraction thereof over \$1.00 - 4- additional tax.~~

A retailer shall determine the amount of tax charged to and received from each purchaser by use of a formula that applies the applicable tax rate to each taxable item or total purchase and the product must be

carried to the third decimal place. Amounts of tax less than one-half of one cent must be disregarded and amounts of tax of one-half of one cent or more must be considered an additional cent of tax. When a local sales tax applies, the determination of tax charged to and received from each customer will be applied to the aggregated state and local taxes.

2. On retail sales of mobile homes used for residential or business purposes, except as provided in subsection 35 of section 57-39.2-04, and of farm machinery, farm machinery repair parts, and irrigation equipment used exclusively for agricultural purposes, retailers shall add the tax imposed under this chapter, or the average equivalent thereof, to the sales price or charge, and when added, such tax constitutes a part of such price or charge, is a debt from the consumer or user to the retailer until paid, and is recoverable at law in the same manner as other debts. In adding such tax to the price or charge, retailers shall add to it three percent of such price or charge.

SECTION 14. AMENDMENT. Subsection 1 of section 57-39.2-14 of the North Dakota Century Code is amended and reenacted as follows:

1. A person may not engage in or transact business as a retailer within this state unless a permit or permits shall have been issued to that person as hereinafter prescribed. Every person desiring to engage in or conduct business as a retailer within this state shall file with the commissioner an application for a permit or permits. Every application for such a permit shall be made upon a form prescribed by the commissioner and shall set forth the name under which the applicant transacts or intends to transact business, the location of the applicant's place or places of business, and such other information as the commissioner may require. The application shall be signed by the owner if a natural person; in the case of an association, partnership, or limited liability company, by a member or partner thereof; and in the case of a corporation, by an executive officer thereof or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of that person's authority. Any person registering under the agreement adopted under chapter 57-39.4 shall register in this state. Any person who is registered under the agreement is not required to sign the application and may register through an agent. Any person who is registered under such agreement may cancel its registration at any time but is liable for remitting any sales taxes collected before cancellation. Registration under the agreement and collection of tax does not in and of itself create nexus for other taxes or fees imposed by this state.

SECTION 15. Section 57-39.2-29 of the North Dakota Century Code is created and enacted as follows:

57-39.2-29. Sourcing - Multiple points of use exemption. Sourcing of retail sales, leases, or rentals must be determined in accordance with the provisions of the agreement adopted under chapter 57-39.4. Notwithstanding any other provisions of law or the sourcing provisions of the agreement adopted under chapter 57-39.4, a business purchaser that is not a holder of a direct pay permit that knows at the time of its purchase of a digital good, computer software delivered electronically, or service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction shall deliver to the

seller in conjunction with its purchase a form prescribed by the commissioner disclosing this fact, referred to as a multiple points of use exemption form.

1. Upon receipt of the multiple points of use exemption form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct pay basis.
2. A purchaser delivering the multiple points of use exemption form may use any reasonable, but consistent and uniform, method of apportionment that is supported by the purchaser's business records as they exist at the time of consumption of the sale.
3. The multiple points of use exemption form remains in effect for all future sales by the seller to the purchaser, except as to the subsequent sale's specific apportionment that is governed by the principle of subsection 2 and the facts existing at the time of the sale, until it is revoked in writing.
4. A holder of a direct pay permit shall not be required to deliver a multiple points of use exemption form to the seller. A direct pay permit holder shall follow the provisions of subsection 2 in apportioning the tax due on a digital good or service that will be concurrently available for use in more than one jurisdiction.

SECTION 16. Section 57-39.2-30 of the North Dakota Century Code is created and enacted as follows:

57-39.2-30. Conditional sales contract. For purposes of the tax imposed by this chapter, on any sale made under a conditional sales contract or under other forms of sale in which the payment of the principle sum is extended over a period longer than sixty days from the date of sale, only the portion of the sale amount that has actually been received in cash by the retailer during each reporting period is subject to the tax imposed by this chapter during that reporting period.

SECTION 17. Section 57-39.2-31 of the North Dakota Century Code is created and enacted as follows:

57-39.2-31. Seller and certified service provider limited immunity. A seller or certified service provider is immune from civil liability for charging and collecting the incorrect amount of sales or use tax in reliance on incorrect information provided by the tax commissioner regarding tax rates, boundaries, or taxing jurisdiction assignments. The tax commissioner will not be required to provide liability relief for errors resulting from the reliance on an address-based system for assigning tax jurisdictions as provided under the agreement adopted under chapter 57-39.4.

SECTION 18. Section 57-39.2-32 of the North Dakota Century Code is created and enacted as follows:

57-39.2-32. Confidentiality of information obtained by certified service providers. A certified service provider or any agent, employee, or other person acting under the authority of a certified service provider may not divulge or make known in any manner whatsoever the business affairs, operations, or information obtained by the certified service provider in the discharge of its duties under this chapter.

SECTION 19. Chapter 57-39.5 of the North Dakota Century Code is created and enacted as follows:

57-39.5-01. Definitions. Words used in this chapter have the same meaning as provided in chapter 57-39.2. As used in this chapter:

1. "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.
2. "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.

57-39.5-01.1. Trade-in deduction. When tangible personal property is taken in trade or in a series of trades as a credit or partial payment of a retail sale taxable under this chapter, if the tangible personal property traded in will be subject to gross receipts taxes imposed by this chapter, sales taxes imposed by chapter 57-39.2, or motor vehicle excise taxes imposed by chapter 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 gross receipts.

57-39.5-02. Imposition - Exemptions. There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail, including the leasing or renting, of farm machinery or irrigation equipment used exclusively for agricultural purposes. Gross receipts from sales at retail of farm machinery or irrigation equipment are exempted from the tax imposed by this chapter when the sale, lease, or rental is made to a purchaser or lessor who is entitled to a sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04 on otherwise taxable sales at retail. There are specifically exempted from the tax imposed by this chapter the gross receipts from the sale or lease of used farm machinery, farm machinery repair parts, or used irrigation equipment used exclusively for agricultural purposes. For purposes of this section, "used" means:

1. Tax under this chapter or chapter 57-39.2 or 57-40.2 has been paid on a previous sale;
2. Originally purchased outside this state and previously owned by a farmer; or
3. Has been under lease or rental for three years or more.

57-39.5-03. Replacement of insured machinery credit. When new farm machinery is purchased as a replacement for machinery on which the insurant has previously paid the gross receipts, sales, or use tax and which was stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the compensation received for the loss from the insurance company. The purchaser

shall provide the seller with a notarized statement from the insurance company verifying that the original farm machinery was a total loss and indicating the amount of compensation. The notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed.

57-39.5-04. Administration. The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, or adoption of rules, not in compliance with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 20. Chapter 57-39.6 of the North Dakota Century Code is created and enacted as follows:

57-39.6-01. Definitions. Words used in this chapter have the same meaning as in chapter 57-39.2. For purposes of this chapter:

1. "Alcoholic beverage" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume. This includes beverages whether mixed or unmixed at the time of sale or thereafter and whether sold for consumption on the premises or through off-sale outlets for consumption off the premises.
2. "Gross receipts", in addition to the meaning provided in chapter 57-39.2, includes the full retail purchase price, including any taxes imposed on such merchandise or its use or on the retail or other sale of the merchandise, excluding taxes imposed under this chapter.

57-39.6-02. Gross receipts tax on alcoholic beverages - Exemption. There is imposed a tax of seven percent on the gross receipts of retailers from all sales at retail of alcoholic beverages. Gross receipts from sales at retail of alcoholic beverages are exempted from the tax imposed by this chapter when the sale is made to a purchaser who is entitled to a sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04 on otherwise taxable sales.

57-39.6-03. Gross receipts tax inclusion in purchase price. Taxes imposed by this chapter may be included in the purchase price of the alcoholic beverages.

57-39.6-04. Administration. The provisions of chapter 57-39.2, pertaining to administration of the retail sales tax, including provisions for refund, credits, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

SECTION 21. AMENDMENT. Subsection 4 of section 57-40.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Purchase price" means the total amount for which tangible personal property is sold, leased, or rented, valued in money, whether paid in money or otherwise, but cash discounts and trade-ins allowed and taken on sales shall not be included. "Purchase price" also means, in those instances when sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel, the fair market value of the sand or gravel severed. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it must be presumed until the contrary is shown by the commissioner or by the person severing the sand or gravel that the fair market value is eight

cents per ton of two thousand pounds [907.18 kilograms]. If records are not kept as to the tonnage of sand or gravel severed from the soil, it must be presumed for the purpose of this chapter that one cubic yard [764.55 liters] of sand or gravel is equal to one and one-half tons [1360.78 kilograms] of sand or gravel. When a farm machine is purchased as a replacement for machinery which was stolen or totally destroyed, a credit or trade-in credit is allowed in an amount equal to the compensation received for the loss from the insurance company. The purchaser shall provide the seller with a notarized statement from the insurance company verifying that the original farm machine was a total loss and indicating the amount of compensation. The notarized statement must be retained by the seller to verify the amount of credit or trade-in credit allowed applies to the measure subject to use tax and has the same meaning as gross receipts as defined in section 57-39.2-01.

SECTION 22. A new subsection to section 57-40.2-01 of the North Dakota Century Code is created and enacted as follows:

"Use tax" means the tax levied under section 57-40.2-02.1 or imposed under home rule authority by a city or county.

SECTION 23. A new subsection to section 57-40.2-02.1 of the North Dakota Century Code is created and enacted as follows:

An excise tax is imposed on the fair market value of sand or gravel severed when sand or gravel is not sold at retail as tangible personal property by the person severing the sand or gravel. If the sand or gravel is not sold at retail by the person severing the sand or gravel, it must be presumed until the contrary is shown by the commissioner or by the person severing the sand or gravel that the fair market value is eight cents per ton of two thousand pounds [907.18 kilograms]. If records are not kept as to the tonnage of sand or gravel severed from the soil, it must be presumed for the purpose of this chapter that one cubic yard [764.55 liters] of sand or gravel is equal to one and one-half tons [1360.78 kilograms] of sand or gravel.

SECTION 24. AMENDMENT. Subsection 14 of section 57-40.2-04 of the North Dakota Century Code is amended and reenacted as follows:

14. The leasing or renting of any tangible personal property upon which a North Dakota sales tax or use tax has been paid pursuant to the election of the purchaser pursuant to subsection 7 14 of section 57-39.2-01 or subsection 5 of section 57-40.2-01.

SECTION 25. REPEAL. Sections 57-39.2-03.2 and 57-39.2-08.3 of the North Dakota Century Code are repealed.

SECTION 26. EFFECTIVE DATE. This Act is effective for taxable events occurring after December 31, 2005.

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 540

HOUSE BILL NO. 1205 (Representatives Maragos, Drovdal) (Senators Trenbeath, Wardner)

MOTOR VEHICLE TAX EXEMPTION FOR TRUSTS

AN ACT to amend and reenact subsection 5 of section 57-40.3-04 of the North Dakota Century Code, relating to a motor vehicle excise tax exemption for transfers of vehicles from certain trusts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁵⁹ **SECTION 1. AMENDMENT.** Subsection 5 of section 57-40.3-04 of the North Dakota Century Code is amended and reenacted as follows:

5. a. ~~Motor vehicles~~ A motor vehicle acquired by inheritance from, by bequest of, or operation of a trust created by a decedent who owned it; ~~the~~
- b. The transfer of a motor vehicle that was previously titled or licensed in the name of an individual or in the names of two or more joint tenants and subsequently transferred without monetary consideration to one or more joint tenants, including a transfer into a trust in which one or more of the joint tenants is beneficiary or trustee; ~~the~~
- c. The transfer of a motor ~~vehicles~~ vehicle by way of gift between a husband and wife, parent and child, or brothers and sisters, including a transfer into a trust in which the trustor and beneficiary occupy one of these relationships; ~~the~~
- d. The transfer of a motor vehicle without monetary consideration into a trust in which the beneficiary is the person in whose name the motor vehicle was previously titled or licensed; ~~and the~~
- e. The transfer of a motor vehicle to reflect a new name of the owner caused by a business reorganization in which the ownership of the reorganized business remains in the same person or persons as prior to the reorganization, but only if the title transfer is completed within one hundred eighty days from the effective date of the reorganization; and
- f. The transfer of a motor vehicle without monetary consideration from a revocable living trust to the spouse, child, or sibling of the trustor.

²⁵⁹ Section 57-40.3-04 was also amended by section 2 of House Bill No. 1328, chapter 536.

SECTION 2. EFFECTIVE DATE. This Act is effective for transfers of motor vehicles occurring after June 30, 2003.

Approved March 19, 2003

Filed March 19, 2003

CHAPTER 541

SENATE BILL NO. 2192

(Senators Krebsbach, Schobinger, Seymour)
(Representatives M. Klein, Maragos, Thorpe)

AUTOMATED NOTIFICATION SYSTEM

AN ACT to create and enact a new subsection to section 57-40.6-01 of the North Dakota Century Code, relating to the definition of automated notification system; and to amend and reenact section 57-40.6-08 of the North Dakota Century Code, relating to liability for emergency services communication systems.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-40.6-01 of the North Dakota Century Code is created and enacted as follows:

"Automated notification system" means that portion of a telecommunications system that provides rapid notice of emergency situations to the public.

SECTION 2. 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, ~~or~~ wireless 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, ~~or~~ wireless services 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.

Approved April 8, 2003

Filed April 9, 2003

CHAPTER 542**HOUSE BILL NO. 1145**

(Natural Resources Committee)
(At the request of the Governor)

**SHALLOW GAS WELL PRODUCTION TAX
EXEMPTION**

AN ACT to create and enact two new subsections to section 57-51-01 and a new section to chapter 57-51 of the North Dakota Century Code, relating to a temporary exemption from the gross production tax for gas produced from shallow gas wells; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 57-51-01 of the North Dakota Century Code are created and enacted as follows:

"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.

"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.

SECTION 2. A new section to chapter 57-51 of the North Dakota Century Code is created and enacted as follows:

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. EXPIRATION DATE. This Act is effective for gas wells completed or recompleted through June 30, 2007, and is thereafter ineffective.

Approved March 20, 2003
Filed March 20, 2003

CHAPTER 543**HOUSE BILL NO. 1210**

(Representatives Weiler, F. Klein, Meier, Onstad)
(Senators Nichols, Urlacher)

OIL EXTRACTION TAX INACTIVE WELL EXEMPTION

AN ACT to create and enact a new subsection to section 57-51.1-03.1 of the North Dakota Century Code, relating to eligibility of a two-year inactive well for exemption from the oil extraction tax; and to amend and reenact subsection 12 of section 57-51.1-01 and subsection 4 of section 57-51.1-03 of the North Dakota Century Code, relating to the definition of a two-year inactive well and eligibility of a work-over project for exemption from the oil extraction tax.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 57-51.1-03.1 of the North Dakota Century Code is created and enacted as follows:

To receive, from the first day of eligibility, a tax exemption under subsection 6 of section 57-51.1-03 on production from a two-year inactive well, the industrial commission's certification must be submitted to the tax commissioner within eighteen months after the end of the two-year inactive well's qualification period.

SECTION 2. AMENDMENT. Subsection 12 of section 57-51.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12. "Two-year inactive well" means any well certified by the industrial commission that has did not produced produce oil in more than one month in the two years any consecutive twenty-four month period before the date of application to the industrial commission for certification as a two-year inactive well being recompleted or otherwise returned to production after July 31, 1995. A well that has never produced oil, a dry hole, and a plugged and abandoned well are eligible for status as a two-year inactive well.

SECTION 3. AMENDMENT. Subsection 4 of section 57-51.1-03 of the North Dakota Century Code is amended and reenacted as follows:

4. The production of oil from a qualifying well that was worked over is exempt from any taxes imposed under this chapter for a period of twelve months, beginning with the first day of the third calendar month after the completion of the work-over project. The exemption provided by this subsection is only effective if the well operator ~~files a notice of intention to begin a work-over project with the industrial commission prior to commencement of the project and~~ establishes to the satisfaction of the industrial commission upon completion of the project that the cost of the project exceeded sixty-five thousand dollars or production is increased at least fifty percent during the first two months after completion of the project. A qualifying well under this subsection is a well with an average daily production of no more than fifty barrels of oil during the latest six calendar months of continuous production ~~prior to the filing of the notice required by this subsection~~. A work-over project under this subsection means the continuous employment of a work-over rig, including recompletions and reentries. The exemption provided by this subsection becomes ineffective if the average price of a barrel of crude oil exceeds the trigger price for each month in any consecutive five-month period. However, the exemption is reinstated if, after the trigger provision becomes effective, the average price of a barrel of crude oil is less than the trigger price for each month in any consecutive five-month period.

Approved March 13, 2003

Filed March 13, 2003

CHAPTER 544

SENATE BILL NO. 2153

(Human Services Committee)

(At the request of the Office of Management and Budget)

PROVIDER ASSESSMENT FOR MENTALLY RETARDED CARE

AN ACT to create and enact a new chapter to title 57 of the North Dakota Century Code, relating to a provider assessment for intermediate care facilities for the mentally retarded; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 57 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter:

1. "Business" has the meaning provided in section 31-08.1-01.
2. "Commissioner" means the state tax commissioner.
3. "Facility" includes the operating entity of each intermediate care facility for the mentally retarded located in this state.
4. "Intermediate care facility for the mentally retarded" means a treatment or care center licensed under chapter 25-16 that provides services eligible for coverage as medical assistance under 42 U.S.C. 1396a(a)(31), and also means the developmental center at westwood park, Grafton.
5. "Licensed bed" means a bed licensed under chapter 25-16 or approved by the secretary of health and human services pursuant to 42 U.S.C. 1396i.
6. "Quarter" means one of four calendar quarters beginning January first, April first, July first, or October first.

Imposition of assessment. An assessment must be imposed on each intermediate care facility for the mentally retarded licensed in this state. No waiver otherwise available under this code is applicable to this assessment.

Basis of assessment. Every year beginning July first, each intermediate care facility for the mentally retarded must be assessed a quarterly rate per licensed bed as of the first day of each quarter. The quarterly rate may not exceed a rate calculated by the department of human services as an annual aggregate of gross revenues as of December thirty-first of the preceding year for all intermediate care facilities for the mentally retarded, multiplied by one and one-half percent, and divided by licensed beds as of December thirty-first of the preceding year.

Reports - Extension.

1. On or before the last day of a quarter, each facility required to pay an assessment under this chapter must make out a return for the quarter in the form and manner prescribed by the commissioner. The facility shall report the number of licensed beds as of the first day of the quarter, the amount of the assessment for the quarter covered by the return, and include such further information the commissioner may require to enable the commissioner to correctly compute and remit the assessment levied by this chapter.
2. Upon request by a facility and a proper showing of the necessity, the commissioner may grant to the facility an extension of time not exceeding thirty days for making a return. If an extension is granted to a facility, the time the facility is required to make payment of the assessment liability must be extended for the same period. Interest must be charged upon the amount of the deferred payment at the rate of twelve percent per annum from the date the assessment would have been due if the extension had not been granted to the date the assessment is paid.
3. A return must be signed by a duly authorized agent of the facility and must contain a written declaration that the return is made and subscribed under the penalties of this chapter.

Payment of assessment. An assessment levied under this chapter must be paid on a quarterly basis and is due and payable on the last day of the quarter.

Penalties - Offenses.

1. If a facility's return or corrected return is not filed or the assessment is not paid within the time required by this chapter or, if upon audit, the facility is found to owe an additional assessment, the facility is subject to a penalty of five percent of the amount of assessment due, plus interest of one percent of the assessment for each month of delay or fraction thereof, excepting the first month after the assessment becomes due. If satisfied that the delay was excusable, the commissioner may waive and, if paid, refund all or any part of the penalty and interest. The penalty and interest must be paid to the commissioner and disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as the assessment imposed under this chapter.
2. A person failing to comply with this chapter or failing to remit the assessment provided by this chapter to the commissioner on a timely basis is guilty of a class B misdemeanor.

Records required. A facility required to pay an assessment under this chapter shall preserve and maintain the records as the commissioner may require for a period of three years and one month. All records must be open to examination at any time by the commissioner or any of the commissioner's duly authorized agents.

Officer and manager liability.

1. If a business that owns or operates a facility fails for any reason to file a required return or to pay an assessment due, any of its officers or managers having control or supervision of, or charged with the responsibility for making a return or payment is personally liable for the failure. The dissolution of a business does not discharge an officer's or manager's liability for a prior failure of the business to make a return or remit the assessment due.
2. If any of the officers or managers elect not to be personally liable for the failure to file the required return or to pay the assessment due, the facility shall make a cash deposit or post with the commissioner a bond or undertaking executed by a surety company authorized to do business in this state. The cash deposit, bond, or undertaking must be in an amount equal to the estimated annual assessment liability of the facility.

Commissioner to administer chapter.

1. The commissioner is charged with the administration of this chapter and shall enforce the assessment, levy, and collection of assessments imposed under this chapter.
2. For the purpose of ascertaining the correctness of a return or for the purpose of ascertaining the number of licensed beds of a facility, the commissioner shall examine or cause to be examined by an agent or representative designated by the commissioner any books, papers, records, or memoranda; require by subpoena the attendance and testimony of witnesses; issue and sign subpoenas; administer oaths; examine witnesses and receive evidence; and compel witnesses to produce for examination books, papers, records, and documents relating to any matter which the commissioner has the authority to investigate or determine.
3. If the commissioner finds an officer or manager of a facility has made a fraudulent return, the costs of a hearing must be assessed to the facility. In all other cases, the costs must be paid by the state.
4. The fees and mileage to be paid witnesses and assessed as costs must be the same as prescribed by law in proceedings in the district court of this state in civil cases. All costs must be assessed in the manner provided by law in proceedings in civil cases. When the costs are assessed to the facility, the costs must be added to the assessment charged against the facility and must be collected in the same manner. Costs assessed to the state must be certified by the commissioner to the state treasurer, who shall issue warrants for the amount of the costs.
5. In cases of disobedience to a subpoena, the commissioner may invoke the aid of a court of competent jurisdiction in requiring the attendance and testimony of witnesses and production of records, books, papers, and documents. The court may issue an order requiring the person to appear before the commissioner and give evidence or produce records, books, papers, and documents. A failure to obey an order of the court may be punished by the court as contempt.

6. Testimony on hearings before the commissioner may be taken by a deposition as in civil cases and an individual may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as provided by this section.

Lien of assessment - Collection - Action authorized.

1. Whenever a facility liable to pay an assessment or penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to the assessment, together with the costs that may accrue, is a lien in favor of this state upon all property and rights to property, whether real or personal, belonging to the facility. In the case of property in which a deceased owner, officer, or manager of a facility held an interest as joint tenant or otherwise with right of survivorship at the time of death, the lien continues as a lien against the property in the hands of the survivor or survivors to the extent of the deceased owner's, officer's, or manager's interest, which interest must be determined by dividing the value of the entire property at the time of the officer's or manager's death by the number of joint tenants or persons interested therein.
2. The lien attaches at the time the assessment becomes due and payable and continues until the liability for the amount is satisfied. For the purposes of this subsection, the words "due" and "due and payable" mean the first instant the assessment becomes due.
3. A mortgagee, purchaser, judgment creditor, or lien claimant acquiring an interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central indexing system maintained by the secretary of state, a notice of the lien provided for in section 57-39.2-12, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central indexing system the following data:
 - a. The name of the facility.
 - b. The tax identification number of the facility or social security number of the owner, officer, or manager of the facility.
 - c. The name "State of North Dakota" as claimant.
 - d. The date and time the notice of lien was indexed.
 - e. The amount of the lien.

The notice of lien is effective as of eight a.m. the next day following the indexing of the notice. A notice of lien filed by the commissioner with the recorder may be indexed in the central indexing system without changing its original priority as to property in the county where the lien was filed.

5. The commissioner is exempt from the payment of the filing fees as otherwise provided by law for the indexing of the notice of lien, or for its satisfaction.

6. Upon payment of the assessment as to which the commissioner has indexed notice in the central indexing system, the commissioner shall index a satisfaction of the lien in the central indexing system.
7. Upon the request of the commissioner, the attorney general shall bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any assessments and any penalties, or to foreclose the lien in the manner provided for mortgages on real or personal property. The state's attorney of the county in which the action is pending shall assist the attorney general.
8. The remedies of this section are cumulative. Action taken by the commissioner or attorney general may not be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.
9. The technical, legal requirements in this section relating to assessment liens on all real and personal property of the officer or manager of the facility to ensure payment of the assessment, including penalties, interest, and other costs, are self-explanatory.

Commissioner may require bond. When in the commissioner's judgment it is necessary and advisable to do so in order to secure the collection of the assessment levied under this chapter, the commissioner may require a person subject to the assessment to file with the commissioner a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility in an amount the commissioner may fix, to secure the payment of any assessment and penalties due or which may become due from the person. In lieu of the bond, securities approved by the commissioner in the amounts as the commissioner prescribes may be deposited with the commissioner, which securities must be kept in the custody of the commissioner and may be sold by the commissioner at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any assessment and penalties due. All moneys deposited as security with the commissioner under this section must be paid by the commissioner to the state treasurer and must be credited by the state treasurer into a special fund to be known as the provider assessment trust fund. If any assessment, penalty, or costs imposed by this chapter are not paid when due, by the person depositing moneys with the commissioner as security for the payment of the assessment, penalty, or costs imposed by this chapter, the commissioner shall certify that information to the director of the office of management and budget who shall transmit the money to the commissioner who shall apply the money deposited by the person or so much thereof as is necessary to satisfy the assessment and penalties due. When in the commissioner's judgment it is no longer necessary to require the deposit to be maintained by the person, the commissioner shall certify that information to the director of the office of management and budget who shall pay the unused money to the entitled person.

Correction of errors. If it appears that, as a result of a mistake, an amount of assessment, penalty, or interest has been paid which was not due under this chapter, the amount must be credited against any assessment due, or to become due, under this chapter from the person who made the erroneous payment, or the amount must be refunded to the person. The person who made the erroneous payment shall present a claim for refund or credit to the commissioner not later than three years after the due date of the return for the period for which the erroneous

payment was made or one year after the erroneous payment was made, whichever is later.

Provider assessment fund. There is a special fund in the state treasury known as the provider assessment fund. The fund includes all revenue received from intermediate care facilities for the mentally retarded for remittance to the fund under this chapter. All moneys designated for the fund from whatever source derived must be deposited with the state treasurer in the provider assessment fund.

Approved April 4, 2003
Filed April 4, 2003

TRUSTS, USES, AND POWERS

CHAPTER 545

SENATE BILL NO. 2047

(Legislative Council)
(Judiciary B Committee)

TRUSTS FOR INDIVIDUALS WITH DISABILITIES

AN ACT relating to trusts for individuals with disabilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires:

1. "Individual with a disability" means an individual who, before creation of a third-party special needs trust or a self-settled special needs trust for that individual's benefit, is considered to be an individual with a disability as defined in 42 U.S.C. 1382c(a)(3).
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).
3. "Third-party special needs trust" means a trust that does not make an individual with a disability ineligible for publicly funded benefits while maintaining assets in that trust and which is created for the benefit of an individual with a disability and funded by someone other than the trust beneficiary, the beneficiary's spouse, a parent of a minor beneficiary, or anyone obligated to pay any sum for damages or any other purpose to or for the benefit of the trust beneficiary under the terms of a settlement agreement or judgment.

SECTION 2. Third-party special needs trusts under state law.

1. A third-party special needs trust must provide for the living expenses and other needs of an individual with a disability when publicly funded benefits are not sufficient to provide adequately for those needs. A third-party special needs trust must limit distributions in a manner and for purposes that supplement or complement publicly funded benefits for an individual with a disability. A third-party special needs trust may not have the effect of replacing, reducing, or substituting for publicly funded benefits otherwise available to a beneficiary with a disability or rendering a beneficiary with a disability ineligible for publicly funded benefits.
2. This section applies to any third-party special needs trust that complies with the requirements of this Act, regardless of the date on which the trust was created or funded. Notwithstanding any other provision of the

law, this Act does not disqualify any beneficiary of a third-party special needs trust from receiving publicly funded benefits if the trust did not disqualify that individual under previous law.

SECTION 3. Self-settled special needs trusts. The district court may authorize the creation and funding of self-settled special needs trusts.

SECTION 4. Interpretation or enforcement - Reformation - Unenforceable trust provisions.

1. This Act does not require the submission of a third-party special needs trust or a self-settled special needs trust to a court for interpretation or enforcement.
2. A third-party special needs trust may not disqualify a recipient of publicly funded benefits solely because a contingent beneficiary is named to receive the net balance of the trust estate upon the death of a beneficiary with a disability, or upon other termination of the trust.
3. The trustee or the grantor of any trust intended to be a third-party special needs trust or a self-settled special needs trust may seek court reformation of the trust to accomplish the purpose of a third-party special needs trust or a self-settled special needs trust.
4. Except for self-settled special needs trusts and third-party special needs trusts, a provision in a trust which provides for the suspension, termination, limitation, or diversion of the principal, income, or beneficial interest of a beneficiary if the beneficiary applies for, is determined eligible for, or receives publicly funded benefits is unenforceable as against the public policy of this state, without regard to the irrevocability of the trust or the purpose for which the trust was created.

Approved March 7, 2003

Filed March 7, 2003

WAREHOUSING AND DEPOSITS

CHAPTER 546

SENATE BILL NO. 2168

(Senators Cook, Tollefson)
(Representatives R. Kelsch, Porter)

LOST PROPERTY OWNERSHIP BY FINDER

AN ACT to amend and reenact section 60-01-34 of the North Dakota Century Code, relating to the assumption of lost property or money by a finder.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-01-34 of the North Dakota Century Code is amended and reenacted as follows:

60-01-34. Finder - Depositary for hire - Assumption of ownership by finder. One who finds a thing lost is not bound to take charge of it but, if the person does so, the person is thenceforward a depositary for the owner with the rights and obligations of a depositary for hire. Notwithstanding chapters 36-22 and 47-30.1 or any other provision of law, an individual who finds lost personal property or money and places the property or money in the custody of a law enforcement agency is entitled to assume ownership of the property or money if the property or money is not claimed by its owner within two years after the property or money was placed in the custody of the law enforcement agency.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 547**HOUSE BILL NO. 1157**

(Agriculture Committee)

(At the request of the Public Service Commission)

**WAREHOUSE AND GRAIN AND HAY BUYER
LICENSING**

AN ACT to create and enact a new section to chapter 60-02 of the North Dakota Century Code, relating to licensed warehouse capacity and condominium storage; and to amend and reenact sections 60-02-07, 60-02-10.1, and 60-02-33, subsection 8 of section 60-02.1-01, sections 60-02.1-07 and 60-02.1-11, subsection 7 of section 60-02.1-14, sections 60-02.1-28, 60-02.1-29, and 60-02.1-32, and subsection 4 of section 60-03-01 of the North Dakota Century Code, relating to licensing of grain warehouses, grain buyers, and hay buyers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 60-02-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02-07. Public warehouse license - How obtained - Fee - Financial statement. An annual license must be obtained from the commission for each public warehouse in operation in this state. The license expires on July thirty-first of each year. An initial license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year. No license may describe more than one public warehouse nor grant permission to operate any public warehouse other than the one described. The annual license fee for a public warehouse is three hundred dollars for a warehouse of a bushel capacity of two hundred thousand [7047.8 cubic meters] or less, four hundred fifty dollars for a warehouse of a bushel capacity of more than two hundred thousand and not more than five hundred thousand [7047.8 to not more than 17619.54 cubic meters], and five hundred fifty dollars for a warehouse of a bushel capacity of more than five hundred thousand [17619.54 cubic meters]. A license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per warehouse. If a public warehouseman operates two or more warehouses in the same city or siding, in conjunction with each other and with the same working force, and keeps one set of books and records for all such warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased therein, only one license is required for the operation of all such warehouses. Where two or more warehouses are operated under one license, the license fee is based upon the combined bushel capacity of the warehouses. If the commission employs fewer than two full-time equivalent warehouse inspectors, each annual fee under this section is reduced by one hundred dollars.

If required to obtain United States department of agriculture approval of the commission's warehouse inspection program, the commission may require that the applicant submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this section is a confidential trade secret and is not a public record.

SECTION 2. AMENDMENT. Section 60-02-10.1 of the North Dakota Century Code is amended and reenacted as follows:

60-02-10.1. Revocation and suspension. The commission may suspend or revoke the license of any warehouseman for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a warehouseman must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license the warehouseman may, upon the commission's approval, operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping, or processing. Grain may be sold only with the prior approval of the commission.

SECTION 3. AMENDMENT. Section 60-02-33 of the North Dakota Century Code is amended and reenacted as follows:

60-02-33. Delivery of grain - Demand terminates storage charge. On the return and surrender of any receipt and the payment of all lawful charges, the grain represented therein shall be deliverable to the owner, and shall not be subject to any further charge for storage after demand for delivery shall have been made and proper facilities for receiving or shipping the same have been provided. The owner of the receipt shall order the receptacle in which the grain covered by the owner's receipt is to be transported, and the grain shall be delivered when the receptacle so ordered is in proper condition for loading and is placed at the warehouse. The licensee may not assess receiving or redelivery fees on the grain that is redelivered during a suspension, following a revocation, or when the owner of the grain is taking redelivery because the licensee is unable to pay for the grain.

SECTION 4. A new section to chapter 60-02 of the North Dakota Century Code is created and enacted as follows:

Licensed warehouse capacity and condominium storage. Unless an entire warehouse facility is used for nonpublic purposes, all physically connected portions of the facility must be licensed in accordance with this chapter. The warehouseman shall issue receipt memoranda for all grain received. Facilities that are physically connected to the licensed warehouse may be sold under a condominium arrangement or leased to other entities for nonpublic use and sales and lease agreements must be based on the capacity of the bins involved and not on the number of bushels held in the space. The licensee shall provide contents insurance and bond coverage for the space. In case of licensee insolvency, the contents of the space must be considered an asset to the trust fund established under chapter 60-04 and owners and lessees are entitled to trust fund protection in a manner equal to all other valid grain receipt holders.

SECTION 5. AMENDMENT. Subsection 8 of section 60-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

8. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt, ~~storage~~, or sale of grain except when such memoranda was received as a result of a credit-sale contract.

SECTION 6. AMENDMENT. Section 60-02.1-07 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-07. Grain buyer license - How obtained - Fee - Financial statement. Grain buyers must obtain an annual license from the commission. The license expires on July thirty-first of each year. An initial license application that becomes effective on or after June first does not expire until July thirty-first of the following calendar year. A facility-based grain buyer must obtain a license for each receiving location operated in the state. If a grain buyer operates two or more facilities in the same city or siding, in conjunction with each other and with the same working force, and where but one set of books and records is kept for all such facilities, and scale tickets and checks of but one series are issued for the grain, purchased, only one license is required for the operation of all such facilities. The annual license fee for a facility-based grain buyer is three hundred dollars; and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee per receiving location. The annual license fee for a roving grain buyer is two hundred dollars; and a license renewal application that is received after July fifteenth must be assessed an additional one hundred dollar fee.

If required to obtain United States department of agriculture approval of the commission's grain buyer inspection program, the commission may require that grain buyers submit a current financial statement prepared in accordance with generally accepted accounting principles. A financial statement furnished under this section is a confidential trade secret and is not a public record.

SECTION 7. AMENDMENT. Section 60-02.1-11 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-11. Revocation and suspension. The commission may suspend or revoke the license of any grain buyer for cause upon notice and hearing. Notwithstanding any other provisions of this chapter, the license of a grain buyer must automatically be suspended for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required. During a suspension of a license a facility-based grain buyer, upon the commission's approval, may operate its facility and purchase or redeliver grain previously received, but may not receive additional grain for purchase, shipping, or processing. Grain may be sold only with the prior approval of the commission.

SECTION 8. AMENDMENT. Subsection 7 of section 60-02.1-14 of the North Dakota Century Code is amended and reenacted as follows:

7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02.1-08. However, if the grain buyer has obtained bond coverage in addition to that required by section ~~60-02.1-15~~ 60-02.1-08 and the coverage extends to the benefit of credit-sale contracts, the grain buyer may state that fact in the credit-sale contract along with the extent of such coverage.

²⁶⁰ **SECTION 9. AMENDMENT.** Section 60-02.1-28 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-28. Insolvency of grain buyer. A licensee is insolvent when the licensee defaults in payment for grain purchased or marketed by the licensee or is

²⁶⁰ Section 60-02.1-28 was also amended by section 1 of House Bill No. 1197, chapter 548.

unable to make redelivery upon proper demand. The licensee may not assess receiving or redelivery fees on grain that is redelivered during a suspension, following a revocation, or when the owner of the grain is taking redelivery because the licensee is unable to pay for the grain.

²⁶¹ **SECTION 10. AMENDMENT.** Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-29. Appointment of commission. Upon the insolvency of any licensee roving grain buyer, the commission shall apply to the district court of Burleigh County, North Dakota for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. If the insolvency involves a facility-based grain buyer, application must be to the district court of a county in which the licensee operates a licensed facility. Upon notice to the licensee as the court shall prescribe, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the claimants that the commission secure and execute the trust, the court shall issue an order granting the application, without bond, and the commission shall proceed to exercise its authority without further direction from the court.

Upon the filing of the commission's application, the court may issue ex parte a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.

²⁶² **SECTION 11. AMENDMENT.** Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-32. Notice to claimants. Upon its appointment, the commission may take possession of relevant books and records of the licensee. ~~The~~ If the insolvency involves a roving grain buyer, the commission shall publish a notice of its appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, potential claimants disclosed by the licensee's records. If the insolvency involves a facility-based grain buyer, the notice must be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located. The notice must require claimants to file their claims with the commission along with the receipts or other evidence of the claims required by the commission. If a claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time set by the commission, the commission is relieved of further duty in the administration of the insolvency on behalf of the claimant and the claimant may be barred from participation in the trust fund. Claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 12. AMENDMENT. Subsection 4 of section 60-03-01 of the North Dakota Century Code is amended and reenacted as follows:

²⁶¹ Section 60-02.1-29 was also amended by section 2 of House Bill No. 1197, chapter 548.

²⁶² Section 60-02.1-32 was also amended by section 5 of House Bill No. 1197, chapter 548.

4. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown domestic grain or grass seed. "Hay" means alfalfa, clover, and any other grain or grass that has been cut and stacked or baled for use as feed for livestock.

Approved March 18, 2003

Filed March 19, 2003

CHAPTER 548

HOUSE BILL NO. 1197

(Representatives Pollert, Mueller, Weisz)
(Senators Erbele, Nichols, Urlacher)

CREDIT-SALE CONTRACT INDEMNITY FUND

AN ACT to create and enact a new chapter to title 60 of the North Dakota Century Code, relating to the creation of a credit-sale contract indemnity fund; to amend and reenact sections 60-02.1-28, 60-02.1-29, 60-02.1-30, 60-02.1-31, 60-02.1-32, 60-02.1-33, and 60-02.1-34, subsection 3 of section 60-02.1-35, and sections 60-02.1-37, 60-04-02, and 60-04-03.1 of the North Dakota Century Code, relating to insolvencies of grain buyers and warehousemen; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶³ **SECTION 1. AMENDMENT.** Section 60-02.1-28 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-28. Insolvency of grain buyer. A licensee is insolvent when the licensee ~~defaults in~~ refuses, neglects, or is unable upon proper demand to make payment for grain purchased or marketed by the licensee.

²⁶⁴ **SECTION 2. AMENDMENT.** Section 60-02.1-29 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-29. Appointment of commission. Upon the insolvency of any licensee, the commission shall apply to the district court of Burleigh County, ~~North Dakota~~ for authority to take all action necessary to act as trustee of the trust fund described in section 60-02.1-30. Upon notice to the licensee as the court ~~shall prescribe~~ prescribes, but not exceeding twenty days, or upon waiver of notice in writing by the licensee, the court shall hear and determine the application in a summary manner. If the court determines that the licensee is insolvent within the meaning of this chapter and that it would be in the best interests of the ~~claimants~~ receipt holders that the commission secure and execute the trust, the court shall issue an order granting the application, without bond, and the commission shall proceed to exercise its authority without further direction from the court.

Upon the filing of the commission's application, the court may issue ex parte a temporary order to preserve or protect the assets of the trust fund until the court issues its order granting or denying the application.

SECTION 3. AMENDMENT. Section 60-02.1-30 of the North Dakota Century Code is amended and reenacted as follows:

²⁶³ Section 60-02.1-28 was also amended by section 9 of House Bill No. 1157, chapter 547.

²⁶⁴ Section 60-02.1-29 was also amended by section 10 of House Bill No. 1157, chapter 547.

60-02.1-30. Trust fund established. Upon the insolvency of any licensee, a trust fund must be established for the benefit of ~~claimants~~ noncredit-sale receiptholders and to pay the costs incurred by the commission in the administration of the insolvency. The trust fund must consist of the following:

1. Nonwarehouse receipt grain of the insolvent licensee held in storage or the proceeds obtained from the conversion of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commission is appointed trustee must be remitted to the commission and included in the trust fund.
3. The proceeds of insurance policies on destroyed grain.
4. The claims for relief, and proceeds therefrom, for damages upon bond given by the licensee to ensure faithful performance of the duties of a licensee.
5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

SECTION 4. AMENDMENT. Section 60-02.1-31 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-31. Joinder of surety - Deposit of proceeds. Each surety on the insolvent licensee's bonds must be joined as a party to the insolvency proceeding. If it is in the best interests of the ~~claimants~~ receiptholders, the court may order a surety to deposit some or all of the penal sum of the bond into the trustee's trust account pending determination of the surety's liability under the bond.

²⁶⁵ **SECTION 5. AMENDMENT.** Section 60-02.1-32 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-32. Notice to ~~claimants~~ receiptholders. Upon its appointment, the commission may take possession of relevant books and records of the licensee. The commission shall publish a notice of its appointment once each week for two consecutive weeks in all daily newspapers in the state and may notify, by ordinary mail, ~~potential claimants~~ the holders of record of outstanding receipts disclosed by the licensee's records. The notice must require ~~claimants~~ outstanding receiptholders to file their claims with the commission along with the receipts or other evidence of the claims required by the commission. If a ~~claimant~~ an outstanding receiptholder fails to submit a claim within forty-five days after the last publication of the notice or a

²⁶⁵ Section 60-02.1-32 was also amended by section 11 of House Bill No. 1157, chapter 547.

longer time set by the commission, the commission is relieved of further duty in the administration of the insolvency on behalf of the ~~claimant~~ receiptholder and the ~~claimant~~ receiptholder may be barred from participation in the trust fund. ~~Claimants~~ Outstanding receiptholders are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

SECTION 6. AMENDMENT. Section 60-02.1-33 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-33. Remedy of ~~claimants~~ receiptholders. No ~~claimant~~ receiptholder has a separate claim for relief upon any insolvent licensee's bond, nor for insurance, nor against any person converting grain, nor against any other ~~claimant~~ receiptholder, except through the trustee, unless, upon demand of five or more ~~claimants~~ receiptholders, the commission fails or refuses to apply for its own appointment or unless the district court denies the application. ~~Provisions of this~~ This chapter ~~de~~ does not prohibit any ~~claimant~~ receiptholder, either individually or in conjunction with other ~~claimants~~ receiptholders, from pursuing concurrently any other remedy against the person or property of the licensee.

SECTION 7. AMENDMENT. Section 60-02.1-34 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-34. Commission to marshall trust assets. Upon its appointment, the commission shall marshall all of the trust fund assets. The commission may maintain suits in the name of the state of North Dakota for the benefit of all ~~claimants~~ receiptholders against the licensee's bonds, insurers of grain, any person who may have converted any grain, and any person who may have received preferential treatment by being paid by the insolvent licensee after the first default.

SECTION 8. AMENDMENT. Subsection 3 of section 60-02.1-35 of the North Dakota Century Code is amended and reenacted as follows:

3. Settle and compromise any action when it will be in the best interests of the ~~claimants~~ receiptholders.

SECTION 9. AMENDMENT. Section 60-02.1-37 of the North Dakota Century Code is amended and reenacted as follows:

60-02.1-37. Report of trustee to court - Approval - Distribution.

1. Upon the receipt and evaluation of claims, the commission shall file with the court a report showing the amount and validity of each claim after recognizing ~~relevant~~ relevant:
- 1- a. ~~Liens~~ Relevant liens or pledges.
- 2- b. ~~Assignments~~ Relevant assignments.
- 3- c. ~~Deductions~~ Relevant deductions due to advances or offsets accrued in favor of the licensee.
- 4- d. In case of relevant cash claims or checks, the amount of the claim, with interest from the date of default at the weighted average prime rate charged by the Bank of North Dakota.

2. The report must also contain the proposed distribution of the trust fund assets, less expenses incurred by the commission in the administration of the insolvency. If the trust fund is insufficient to redeem all claims in full, the report should list the funds as prorated.
3. The court shall set a hearing and the appropriate notice for interested persons to show cause why the commission's report should not be approved and distribution of the fund be made as proposed. Copies of the report and notice of hearing must be served by the commission by certified mail upon the licensee and the surety and by ordinary mail upon all ~~claimants~~ persons having claims filed with the commission.
4. Any aggrieved person having an objection to the commission's report shall file the objection with the court and serve copies on the commission, the licensee, and the surety at least ten days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Following the hearing, the court shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, and discharge of the commission from its trust.

SECTION 10. AMENDMENT. Section 60-04-02 of the North Dakota Century Code is amended and reenacted as follows:

60-04-02. Insolvency of warehouseman. ~~Whenever any warehouseman, by reason of the destruction of the person's warehouse or for any other cause, shall refuse, neglect, or be unable, upon proper demand, to redeem any receipt issued by the warehouseman, through redelivery or cash payment, such warehouseman shall be deemed to be insolvent within the meaning of this chapter~~ A licensee is insolvent when the licensee refuses, neglects, or is unable, upon proper demand, to redeem any receipt issued by the warehouseman, through redelivery or cash payment, such warehouseman shall be deemed to be insolvent within the meaning of this chapter make payment for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.

SECTION 11. AMENDMENT. Section 60-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

60-04-03.1. Trust fund established. Upon the insolvency of any warehouseman, a trust fund shall be established for the benefit of noncredit-sale receiptholders of the insolvent warehouseman and to pay the costs incurred by the commission in the administration of this chapter. The trust fund must consist of the following:

1. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of such grain.
2. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commission is appointed trustee must be remitted to the commission and included in the trust fund.
3. The proceeds of insurance policies upon grain destroyed in the elevator.

4. The claims for relief, and proceeds therefrom, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman.
5. The claim for relief, and proceeds therefrom, for the conversion of any grain stored in the warehouse.
6. Unencumbered accounts receivable for grain sold prior to the filing of the claim that precipitated an insolvency.
7. Unencumbered equity in grain hedging accounts.
8. Unencumbered grain product assets.

SECTION 12. A new chapter to title 60 of the North Dakota Century Code is created and enacted as follows:

Credit-sale contracts - Assessment on grain - Submission of assessment. An assessment at the rate of two-tenths of one percent is placed on the value of all grain sold in this state under a credit-sale contract, as provided for in sections 60-02-19.1 and 60-02.1-14. The licensee purchasing the grain shall note the assessment on the contract required under sections 60-02-19.1 and 60-02.1-14 and shall deduct the assessment from the purchase price payable to the seller. The licensee shall submit any assessment collected under this section to the public service commission no later than thirty days after each calendar quarter. The commission shall deposit the assessments received under this section in the credit-sale contract indemnity fund.

Credit-sale contract indemnity fund - Creation - Continuing appropriation. There is created in the state treasury the credit-sale contract indemnity fund. The fund and interest earned on 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.

Credit-sale contract indemnity fund - Suspension of assessment. When the credit-sale contract indemnity fund reaches a level of ten 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 million dollars, the public service commission shall require collection of the assessment.

Credit-sale contract indemnity fund - Eligibility for reimbursement. A person is eligible to receive indemnity payments from the credit-sale contract indemnity fund if:

1. After August 1, 2003, the person sold grain to a licensed warehouse or a grain buyer in this state under the provisions of a credit-sale contract;
2. The licensed warehouse to which the person sold grain or the grain buyer to whom the person sold grain becomes insolvent; and
3. The licensed warehouse or the grain buyer, as a result of the insolvency, does not fully compensate the person in accordance with the credit-sale contract.

Credit-sale contract indemnity fund - Availability of money. Upon the insolvency of a licensed warehouse or a grain buyer and a declaration that the public service commission serve as the trustee, the public service commission shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

Credit-sale contract indemnity fund - Reimbursement limit. The amount payable to any eligible person from the credit-sale contract indemnity fund may not exceed the lesser of eighty percent of the amount owed to that eligible person in accordance with all of that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars.

Credit-sale contract indemnity fund - Prorated claims. If claims for indemnity payments from the credit-sale contract indemnity fund exceed the amount in the fund, the public service commission shall prorate the claims and pay the prorated amounts. As future assessments are collected, the public service commission shall continue to forward indemnity payments to each eligible person until the person receives the maximum amount payable in accordance with this chapter.

Reimbursement for later insolvencies. The public service commission shall ensure that all persons eligible for payment from the indemnity fund as a result of an insolvency are fully compensated to the extent permitted by this chapter before any payments from the indemnity fund are initiated as a result of a later insolvency.

Credit-sale contract indemnity fund - Reimbursement for administrative expenses. Any expense incurred by the public service commission in administering the credit-sale contract indemnity fund is reimbursable from the fund before any other claim for indemnity is paid.

Credit-sale contract indemnity fund assessment - Failure to collect assessment - Penalty. Any person who knowingly or intentionally refuses or fails to collect the assessment required under this chapter from producers or to submit any assessment collected from producers to the public service commission for deposit in the credit-sale contract indemnity fund is guilty of a class A misdemeanor.

Revocation and suspension. The commission may suspend or revoke the license of any licensee for cause upon notice and hearing for violation of this chapter.

Cease and desist. If a person engages in an activity or practice that is contrary to this chapter or rules adopted by the commission, the commission, upon its own motion without complaint and with or without a hearing, may order the person to cease and desist from the activity until further order of the commission. The order may include any corrective action up to and including license suspension. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

Claims. A claim concerning a grain buyer must be administered in a manner consistent with chapter 60-02.1. A claim concerning a state licensed grain warehouse must be administered in a manner consistent with chapter 60-04. A payment may not be made from the credit-sale contract indemnity fund for a claim based on losses resulting from the sale of grain to a person not licensed under

chapter 60-02, chapter 60-02.1, or the United States Warehouse Act [Pub. L. 106-472; 114 Stat. 2061; 7 U.S.C. 241 et seq.].

Subrogation. Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim constitutes a debt obligation of the person against whom the claim was made. The commission may take action on behalf of the fund against a person to recover the amount of payment made, plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant shall subrogate its interest, if any, to the commission in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

Unlicensed facility-based grain buyer. This chapter also applies to a facility-based grain buyer, as defined in section 60-02.1-01, which is licensed under the United States Warehouse Act but which does not possess a state grain buyer license. The commission has the duty and power to examine and inspect, during regular business hours, all books, documents, and records related to collections and remittances pertaining to the credit-sale contract indemnity fund. In the case of insolvency, credit-sale contract payments to valid claimants must be reduced by an amount equal to the credit-sale contract indemnity payments received from payments administered by the United States department of agriculture.

Approved April 18, 2003
Filed April 18, 2003

WATERS

CHAPTER 549

SENATE BILL NO. 2193

(Senator Traynor)

(Representatives D. Johnson, Nicholas)

DEVILS LAKE BONDS EXTENSION

AN ACT to amend and reenact section 11 of chapter 535 of the 1999 Session Laws as amended by section 1 of chapter 559 of the 2001 Session Laws, relating to the issuance of bonds for construction of an outlet from Devils Lake.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 11 of chapter 535 of the 1999 Session Laws as amended by section 1 of chapter 559 of the 2001 Session Laws is amended and reenacted as follows:

SECTION 11. EXPIRATION DATE. Except for the issuance of bonds for construction of an outlet from Devils Lake, the authority of the commission to issue bonds as provided in chapter 61-02.1 is effective through June 30, 2001, and after that date is ineffective. The authority of the commission to issue bonds as provided in chapter 61-02.1 for construction of an outlet from Devils Lake is effective through June 30, ~~2003~~ 2005, and after that date is ineffective. However, the commission may continue to exercise all other powers granted to it under this Act and to comply with any covenants entered into pursuant to this Act.

Approved April 8, 2003

Filed April 9, 2003

CHAPTER 550

HOUSE BILL NO. 1148

(Natural Resources Committee)

(At the request of the State Water Commission)

WATER BOARD EASEMENTS AND DAM PERMITS

AN ACT to create and enact a new section to chapter 61-16.1 of the North Dakota Century Code, relating to release of water resource board easements; and to amend and reenact sections 61-02-14.1, 61-16.1-38, and 61-16.1-53 of the North Dakota Century Code, relating to dam construction easements, dam construction permits, and dike and dam removal notices and hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-02-14.1 of the North Dakota Century Code is amended and reenacted as follows:

61-02-14.1. Release or assignment of easements - Procedure. The commission may, when it deems such action to be in the best interest of the state, for good and valuable consideration, release easements granted to the state for the construction, operation, and maintenance of dams, along with access thereto, if such dams have not been constructed within ten years of the granting of the easement or if such dams are no longer useful ~~and will not be reconstructed.~~ The commission may also assign such easements to a political subdivision if it determines the assignment would be in the best interests of the state. Any release ~~executed under the authority of this section~~ or assignment shall be in the name of the state of North Dakota by the governor and attested by the secretary of state.

SECTION 2. A new section to chapter 61-16.1 of the North Dakota Century Code is created and enacted as follows:

Release of easements - Procedure. When it deems such action to be in the best interests of the district or other political subdivision, a water resource board or governing body of another political subdivision may release easements assigned to it from the state for the construction, operation, and maintenance of dams, along with access to the dams, if the dams are no longer useful.

SECTION 3. AMENDMENT. Section 61-16.1-38 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-38. Permit to construct or modify dam, dike, or other device required - Penalty - Emergency. No dikes, dams, or other devices for water conservation, flood control regulation, watershed improvement, or storage of water which are capable of retaining, obstructing, or diverting more than ~~twelve and one-half~~ fifty acre-feet [~~45448.52~~ 61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, may be constructed within any district except in accordance with the provisions of this chapter. An application for the construction of any dike, dam, or other device, along with complete plans and specifications, must be presented first to the state engineer. Except for low-hazard dams less than ten feet [3.05 meters] in height, the plans and specifications must be completed by a professional engineer registered in this state. After receipt, the state engineer shall consider the application in such

detail as the state engineer deems necessary and proper. The state engineer shall refuse to allow the construction of any unsafe or improper dike, dam, or other device which would interfere with the orderly control of the water resources of the district, or may order such changes, conditions, or modifications as in the judgment of the state engineer may be necessary for safety or the protection of property. Within forty-five days after receipt of the application, except in unique or complex situations, the state engineer shall complete the state engineer's initial review of the application and forward the application, along with any changes, conditions, or modifications, to the water resource board of the district within which the contemplated project is located. The board thereupon shall consider, within forty-five days, the application, and suggest any changes, conditions, or modifications to the state engineer. If the application meets with the board's approval, the board shall forward the approved application to the state engineer. The state engineer shall make the final decision on the application and forward that decision to the applicant and the local water resource board. The state engineer may issue temporary permits for dikes, dams, or other devices in cases of an emergency. Any person constructing a dam, dike, or other device, which is capable of retaining, obstructing, or diverting more than ~~twelve and one-half~~ twelve and one-half fifty acre-feet [~~15418.52~~ 61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, without first securing a permit to do so, as required by this section, is liable for all damages proximately caused by the dam, dike, or other device, and is guilty of a class B misdemeanor.

SECTION 4. AMENDMENT. Section 61-16.1-53 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-53. Removal of a noncomplying dike or dam - Notice and hearing - Appeal - Injunction. Upon receipt of a complaint of unauthorized construction of a dike, dam, or other device for water conservation, flood control, regulation, watershed improvement, or storage of water, the water resource board shall promptly investigate and make a determination thereon. If the board determines that a dam or other device, capable of retaining, obstructing, or diverting more than ~~twelve and one-half~~ twelve and one-half fifty acre-feet [~~15418.52~~ 61674.08 cubic meters] of water or twenty-five acre-feet [30837.04 cubic meters] of water for a medium-hazard or high-hazard dam, has been established or constructed by a landowner or tenant contrary to this title or any rules adopted by the board, 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 noncompliance and must state that if the dike, dam, or other device is not removed within the period the board determines, but not less than fifteen days, the board shall cause the removal of the dike, dam, or other device 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 apply to the appropriate district court for an injunction prohibiting the landowner or tenant from constructing or maintaining the dike, dam, or other device, or ordering the landowner to remove the dike, dam, or other device. 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 proportion to the responsibility of the landowners. A person 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 prerequisite to an appeal.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 551

SENATE BILL NO. 2126

(Natural Resources Committee)
(At the request of the State Engineer)

WATER PERMITS AND IRRIGATION USE

AN ACT to amend and reenact subsection 6 of section 61-04-01.1, subsection 3 of section 61-04-05, and subsection 3 of section 61-04-05.1 of the North Dakota Century Code, relating to the definition of irrigation use, water permit applications, and water permit hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 61-04-01.1 of the North Dakota Century Code is amended and reenacted as follows:

6. "Irrigation use" means the use of water for application to more than one acre [.40 hectare] of land to stimulate the growth of agricultural crops or the maintenance of recreation areas such as athletic fields, golf courses, parks, and similar types of areas, except when the water for the facility is provided by a municipal water system.

SECTION 2. AMENDMENT. Subsection 3 of section 61-04-05 of the North Dakota Century Code is amended and reenacted as follows:

3. Give notice of the application by certified mail in the form prescribed by rule to all municipal or public use water facilities ~~in the county in which~~ within a twelve-mile radius of the proposed water appropriation site is located. The state engineer shall provide a list of all municipal or public use water facilities that must be notified under this subsection to the applicant.

SECTION 3. AMENDMENT. Subsection 3 of section 61-04-05.1 of the North Dakota Century Code is amended and reenacted as follows:

3. Within thirty days of service of the recommended decision, the applicant and any person who would be aggrieved by the decision and who filed written comments may file additional written comments with the state engineer or request a hearing on the application, or both. A request for a hearing must be made in writing and must state with particularity how the person would be aggrieved by the decision and the issues and facts to be presented at the hearing. If a request for a hearing is not made, the state engineer shall consider the additional comments, if any are submitted, and issue a final decision. If a request for a hearing is made, or if the state engineer determines a hearing is necessary to obtain additional information to evaluate the application or to receive public input, the state engineer shall designate a time and place for the hearing and serve a copy of the notice of hearing upon the applicant and any person who filed written comments. Service must be made in

the manner allowed for service under the North Dakota Rules of Civil Procedure at least twenty days before the hearing.

Approved March 12, 2003

Filed March 13, 2003

CHAPTER 552

SENATE BILL NO. 2278

(Senators Fischer, Heitkamp, Urlacher)
(Representatives Hanson, Koppelman, Nelson)

WATERCOURSE MAINTENANCE AND BRIDGE DEBRISMENT

AN ACT to amend and reenact section 61-16.1-09.1 of the North Dakota Century Code, relating to maintenance of natural watercourses and debrisement of bridges and low water crossings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

61-16.1-09.1. Watercourses, bridges, and low water crossings.

1. A water resource board may undertake the snagging, clearing, and maintaining of natural watercourses and the debrisement of bridges and low water crossings. The board may finance the project in whole or in part with funds raised through the collection of a special assessment levied against the land and premises ~~within the watershed~~ benefited by the project. All provisions of this chapter apply to assessments levied under this section except:
 - 4- a. An assessment may not exceed fifty cents per acre [.40 hectare] annually on agricultural lands and may not exceed fifty cents annually for each five hundred dollars of taxable valuation of nonagricultural property; and
 - 2- b. If the assessment is for a project costing less than one hundred thousand dollars, no action is required for the establishment of the assessment district or the assessments except the board must approve the project and assessment by a vote of two-thirds of the members and the board of county commissioners of the county must approve and levy the assessments to be made by a vote of two-thirds of its members.
 - c. All revenue from an assessment under this section must be exhausted before a subsequent assessment covering any portion of lands subject to a prior assessment may be levied.

2. Before an assessment may be levied under this section, a public hearing must be held attended by a quorum of the board and a quorum of the board of county commissioners. 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 March 27, 2003

Filed March 28, 2003

CHAPTER 553**SENATE BILL NO. 2277**

(Senators Fischer, Dever, Trenbeath)
(Representatives Hanson, Mueller, Nelson)

JOINT WATER BOARD AS POLITICAL SUBDIVISION

AN ACT to amend and reenact subsection 1 of section 61-16.1-11 of the North Dakota Century Code, relating to the joint exercise of powers by water resource districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 61-16.1-11 of the North Dakota Century Code is amended and reenacted as follows:

1. Two or more districts may, by agreement, jointly or cooperatively exercise any power which is authorized a board by this title. The agreement shall state its purpose and the powers to be exercised, and shall provide for the method by which the power or powers shall be exercised. When the agreement provides for the use of a joint water resource board, the joint board shall be representative of the boards which are parties to the agreement. Notwithstanding other provisions of law, the agreement may specify the number, composition, terms, or qualifications of the members of the joint board. A joint board created under this section is a political subdivision of the state.

Approved March 27, 2003
Filed March 28, 2003

CHAPTER 554

SENATE BILL NO. 2240

(Senators Heitkamp, G. Lee, Traynor)
(Representatives Amerman, D. Johnson, Nelson)

WATER PROJECT BIDS

AN ACT to amend and reenact sections 61-16.1-14, 61-21-45, 61-35-13, and 61-35-88 and subsection 2 of section 61-35-94 of the North Dakota Century Code, relating to bids for water district construction, maintenance, and improvement projects; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03, 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 ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03, the board must let a contract in accordance with chapters 48-01.1 and 48-02.

SECTION 2. 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 ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03 in any one year, 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 such work exceeds ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03 in any one year, a contract must be let in accordance with chapters 48-01.1 and 48-02. 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 3. 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 ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03, 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 ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03, 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 4. 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 ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03 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 5. 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 ~~fifty thousand dollars~~ the amount provided for construction of a public improvement under section 48-01.1-03; or

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 8, 2003
Filed April 9, 2003

CHAPTER 555**SENATE BILL NO. 2280**

(Senators Fischer, Every, Heitkamp, Urlacher)
(Representatives Hanson, Hawken)

FLOOD CONTROL PROJECT ASSESSMENTS

AN ACT to amend and reenact section 61-16.1-40.1 of the North Dakota Century Code, relating to the assessment for federally constructed flood control 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 per acre [.40 hectare] annually on agricultural lands and may not exceed one dollar and fifty cents 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 must approve and levy the assessments to be made by a vote of two-thirds of its members.

Approved March 21, 2003
Filed March 21, 2003

CHAPTER 556

SENATE BILL NO. 2362

(Senators Fischer, Espegard)
(Representatives Delmore, Maragos, Wieland)

FLOODPLAIN MANAGEMENT

AN ACT to amend and reenact sections 61-16.2-02, 61-16.2-06, 61-16.2-08, 61-16.2-09, 61-16.2-10, 61-16.2-13, and 61-16.2-14 of the North Dakota Century Code, relating to floodplain management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.2-02 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-02. Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Commission" means state water commission.
2. "Community" means any political subdivision that has the authority to zone.
3. "Conveyance" or "hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.
4. "District" means a water resource district, as defined in chapter 61-16.1.
4. 5. "Flood fringe" means that portion of a floodplain outside of the floodway.
5. 6. "Floodway" or "regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot [.30 meter].
7. "Person" means any person, firm, partnership, association, corporation, limited liability company, agency, or any other private or governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, or any political subdivision of the state.
6. 8. "State engineer" means the state engineer appointed pursuant to section 61-03-01, who is also the chief executive officer of the commission, or, for the purpose of this chapter, the state engineer's designee.

For the purposes of this chapter, the state engineer shall, in addition to the definitions listed above, follow the definitions under the national flood insurance program [42 U.S.C. 4001 et seq.] and implementing regulations, which are hereby incorporated into and made a part of this chapter by reference.

SECTION 2. AMENDMENT. Section 61-16.2-06 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-06. Permissible floodway uses. Upon delineation of the floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], uses shall be permitted within the floodway to the extent that they do not cause any ~~increase~~ measurable decrease in the ~~elevation of the base flood~~ hydraulic conveyance in the affected area.

SECTION 3. AMENDMENT. Section 61-16.2-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-08. Community standards - Permissible uses within flood fringe.

4. Upon delineation of the floodplain or floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], the following uses shall be permitted within the flood fringe to the extent that they are not prohibited by any other ordinance, regulation, or statute:

a. 1. Any use permitted in the ~~designated~~ regulatory floodway pursuant to section 61-16.2-06.

b. 2. Structures, including residential, ~~commercial,~~ and ~~industrial~~ nonresidential structures; provided, that:

(1) ~~Such structures meet the standards either adopted by the community or if the community has not adopted standards, then the structures must meet the standards set forth in paragraphs 2 and 3.~~

(2) a. Residential structures are constructed on fill such that the lowest floor, including basements, is elevated to at least one foot [30.48 centimeters] above the base flood ~~level~~ elevation unless granted a residential basement floodproof exception under the national flood insurance program.

(3) b. ~~Commercial and industrial~~ Nonresidential structures are either constructed on fill as specified in ~~paragraph 2~~ subdivision a elevated to at least one foot [.30 meter] above the base flood elevation or are adequately floodproofed up to an elevation no lower than ~~one foot two feet [30.48 centimeters .61 meter]~~ two feet [.61 meter] above the base flood level elevation. Such floodproofing shall be in accordance with the standards either adopted by the community under the national flood insurance program [42 U.S.C. 4001 et seq.] or under this chapter, whichever are more restrictive.

2. a. ~~Standards adopted by the community for structures in the flood fringe must meet or exceed the following:~~

(1) ~~Residential structures must be constructed on fill so that the lowest floor, including basements, is elevated to or above the base flood level unless granted a residential floodproof exception under the national flood insurance program [Pub. L. 90-448; 82 Stat. 572; 42 U.S.C. 4001 et seq.].~~

- (2) Commercial and industrial structures must be constructed on fill as specified in subdivision a or must be adequately floodproofed up to an elevation no lower than the base flood level. The floodproofing must be in accordance with the standards adopted by the community under the national flood insurance program [Pub. L. 90-448; 82 Stat. 572; 42 U.S.C. 4001 et seq.] or under this chapter, whichever are more restrictive.
- b. Communities are encouraged to adopt standards that require residential structures to be constructed so that the lowest floor is elevated to at least one foot [30.48 centimeters] above the base flood level and commercial and industrial structures are constructed so that the lowest floor is elevated to at least one foot [30.48 centimeters] above the base flood level or the structures are adequately floodproofed up to an elevation no lower than one foot [30.48 centimeters] above the base flood level.

SECTION 4. AMENDMENT. Section 61-16.2-09 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-09. Enforcement and penalties.

1. It is unlawful for any person to establish any use which is not in accordance with this chapter within any floodplain without prior written approval of the affected community. Every use placed in the floodplain in violation of this chapter or a floodplain management ordinance adopted under or in compliance with the provisions of this chapter, or adopted under the national flood insurance program [42 U.S.C. 4001 et seq.], is a public nuisance and the construction or installation thereof may be enjoined by an action brought by the state engineer or the appropriate community. The state engineer or community may obtain a court order directing the removal or elimination of such public nuisance; or authorizing the state engineer or community to remove the public nuisance, or cause to be removed, at the expense of the owner. A person who violates any of the provisions of this chapter is guilty of a class B misdemeanor.
2. ~~This chapter shall not apply to any construction or structures existing or for which a building permit has been issued in the floodplain prior to the adoption by the community of floodplain management ordinances under the national flood insurance program [42 U.S.C. 4001 et seq.].~~
3. Any community which fails to adopt or enforce floodplain management ordinances as required under the national flood insurance program [42 U.S.C. 4001 et seq.] by this chapter shall not be eligible to receive any flood disaster assistance, financial or otherwise, from this state pursuant to chapter 37-17.1 or any other state funds available under any other authority for flood relief.

SECTION 5. AMENDMENT. Section 61-16.2-10 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-10. Exceptions. This chapter shall not apply to the following actions or construction, as long as the flood carrying capacity within the altered or relocated portion of any watercourse is maintained, and the cumulative effect of any

such action or construction will not increase the water surface elevation of the base flood more than one foot [30.48 centimeters] at any point:

1. Ring dikes around individual farmsteads which are not constructed with tiebacks to existing roadways or dikes. For the purposes of this section, "ring dike" means an embankment constructed of earth or other suitable materials for purposes of enclosing a farmstead consisting of a farm dwelling and associated farm buildings.
2. Agricultural dikes along the Red River of the North and Bois de Sioux River which are constructed pursuant to and in accordance with any joint and cooperative agreements between North Dakota and Minnesota for the establishment of criteria for authorizing dikes and other flood control structures and measures on the Red River of the North and Bois de Sioux River.

Any exception to the national flood insurance program [42 U.S.C. 4001 et seq.] and implementing regulations granted by the appropriate federal agency to a community which is participating in the national flood insurance program [42 U.S.C. 4001 et seq.] shall be an approved exception pursuant to this section. ~~On July 4, 1984, the state engineer shall immediately apply to the appropriate federal agency for an exception for the uses specifically described in this section.~~

SECTION 6. AMENDMENT. Section 61-16.2-13 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-13. Flood insurance. ~~All communities~~ Communities that have residential, ~~commercial, or industrial~~ and nonresidential structures in areas subject to excessive flooding, as determined by the state engineer, shall participate in the national flood insurance program [Pub. L. 90-448] and Acts amendatory thereof or supplementary thereto, so that the people of North Dakota may have the opportunity to indemnify themselves from future flood losses through the purchase of this insurance. A community is not required to participate in the program if all of the land under the jurisdiction of the community is enrolled as a result of another community's participation in the program.

SECTION 7. AMENDMENT. Section 61-16.2-14 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-14. State engineer review of development in mapped regulatory floodways - Exceptions. Before issuing a permit or authorization to allow a use in a ~~mapped~~ regulatory floodway, the community responsible for permitting or authorizing such use shall notify the state engineer of the proposed use. The state engineer shall determine whether a functioning hydraulic model is needed to measure the effect of the proposed use. Upon the request of the state engineer, the community shall submit to the state engineer for review all technical documentation, including a functioning hydraulic model and other technical information analyzing needed for the state engineer's review to analyze the proposed use and identifying to identify its proposed impact. Upon the request of the state engineer, the community shall provide additional information needed by the state engineer for the state engineer's review. The state engineer shall complete the state engineer's review within thirty days after receiving the technical documentation. Upon completion of the state engineer's review, the state engineer shall notify the community whether the proposed use is in compliance with state and federal law. A community may apply to the state engineer for an exemption on a case-by-case basis from this section. The state engineer may grant the exemption if the state engineer determines that the

community ~~has the technical hydraulic expertise to~~, by using its own technical review, can determine if the proposed use is in compliance with state and federal law.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 557**SENATE BILL NO. 2180**

(Senators Bowman, Urlacher, Wardner)
(Representatives Kempenich, Kerzman)

**SOUTHWEST WATER AUTHORITY DIRECTOR
COMPENSATION**

AN ACT to amend and reenact section 61-24.5-04 of the North Dakota Century Code, relating to compensation of the members of the board of directors of the southwest water authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24.5-04 of the North Dakota Century Code is amended and reenacted as follows:

61-24.5-04. Board of directors - Officers - Meetings - Compensation.

The authority must be governed by a board of directors who must be chosen in accordance with this chapter. One director must be elected from each county within the authority, and two directors must be elected in the city of Dickinson. The director from Stark County may not be a resident of the city of Dickinson. The board shall elect from the directors a chairman, vice chairman, and secretary. A majority of the directors constitutes a quorum for the purpose of conducting the business of the board. The board shall meet at the time and place designated by the secretary. Board members are entitled to receive as compensation in the an amount determined by the board not to exceed ~~sixty-two dollars and fifty cents~~ the amount per day provided members of the legislative council under section 54-35-10 and must be reimbursed for their mileage and expenses in the amount provided for by sections 44-08-04 and 54-06-09.

Approved March 25, 2003
Filed March 25, 2003

CHAPTER 558

SENATE BILL NO. 2419

(Senators Stenehjem, Christmann, Heitkamp)

(Representatives Berg, Boucher, Drovdal)

(Approved by the Delayed Bills Committee)

WATER QUALITY STANDARDS ENFORCEMENT

AN ACT to amend and reenact subsection 5 of section 61-28-02, subsections 1 and 3 of section 61-28-06, section 61-28-07, and subsection 5 of section 61-28-08 of the North Dakota Century Code, relating to penalties for violating injunctive orders preventing Clean Water Act violations, to clarify the state's authority to seek injunctive relief against governmental entities that violate water quality standards of the state, and authority of the state to protect water quality from degradation; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 61-28-02 of the North Dakota Century Code is amended and reenacted as follows:

5. "Person" includes any corporation, limited liability company, individual, partnership, association, or other public or private entity, including any state or federal agency or entity responsible for managing a state or federal facility, and includes any officer or governing or managing body of any such entity.

SECTION 2. AMENDMENT. Subsections 1 and 3 of section 61-28-06 of the North Dakota Century Code are amended and reenacted as follows:

1. It shall be unlawful for any person:
 - a. To cause pollution of any waters of the state, or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state; and
 - b. To discharge any wastes into any waters of the state, or to otherwise cause pollution, which ~~reduce~~ reduces the quality of such waters below the water quality standards established therefor by the department.
3. Notwithstanding any other provisions of this chapter, and except as in compliance with the provisions of this chapter, and any rules and regulations promulgated hereunder, the discharge of any wastes, or the violation of any water quality standards, by any person shall be unlawful. The department may seek injunctive relief for a threatened or continuing violation of a water quality standard, including any violations of the narrative standards, if the department determines that the violation will substantially interfere with or cause or threaten to cause long-term or irreparable harm to waters of this state that the department determines has statewide or regional significance or has a substantial impact to a local community. The authority to seek injunctive relief for a violation of the water quality standards, including violations of the

narrative standards, is limited to the department, after obtaining written approval of the governor, and may not be enforced by any other person.

SECTION 3. AMENDMENT. Section 61-28-07 of the North Dakota Century Code is amended and reenacted as follows:

61-28-07. Proceedings. Any proceeding under this chapter for issuance or modification of rules, including emergency orders relating to control of water pollution or for determining compliance with or violation of this chapter, or adoption of any rule or order under this chapter by the department, must be conducted in accordance with chapter 28-32. Any person claiming to be aggrieved or adversely affected by actions taken, or by any rule or order issued under this chapter may request a hearing by the department. There is a right of appeal to the district court from any adverse ruling by the department. Where an emergency exists requiring immediate action to protect the quality of water for legitimate uses and the public health and welfare, the department, without further notice or hearing, may issue an order reciting the existence of the emergency and requiring that such immediate action be taken as is necessary to meet this emergency. Notwithstanding this chapter, the order is effective immediately. Any person to whom the order is directed shall comply immediately, but on application to the department must be afforded a hearing before the department within ten days. On the basis of that hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing. In the alternative, upon receipt of evidence that a pollution source or combination of sources is presenting an imminent and substantial endangerment to the health of persons or to the welfare of persons where the endangerment to welfare is to the livelihood of those persons, or upon receipt of evidence that pollution causes or threatens to cause a continuing violation of water quality standards in a manner that substantially interferes with or causes long-term or irreparable harm to waters of this state that the department determines has statewide or regional significance or has a substantial impact to a local community, the department may bring suit on behalf of the state in the district court for the county in which the violation is taking place to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge of pollutants causing or contributing to the pollution, or to otherwise enjoin any pollution causing a substantial water quality violation as described in this section, or to take such other action as may be necessary.

SECTION 4. AMENDMENT. Subsection 5 of section 61-28-08 of the North Dakota Century Code is amended and reenacted as follows:

5. Without prior revocation of any pertinent permits, the department may, in accordance with the laws of this state governing injunctions or other process, maintain an action in the name of the state against any person to enjoin any threatened or continuing violation of any provision of this chapter or any permit condition, rule, order, limitation, or other applicable requirement implementing this chapter. In addition to any other penalties provided in this section, or other provisions of this code, any person who violates an order for injunctive relief is subject to sanctions, not to exceed twenty-five thousand dollars per day per violation. In determining the amount of the sanction, the court shall consider the seriousness of the violation or violations, any good-faith efforts to comply with the court's order, any history of such violations, the economic impact of the sanction on the violator, the environmental and economic impacts to the resource caused by the violation or violations, the comparative environmental and economic impacts on any other resources affected, if any, and such other matters as justice may require. As an additional sanction for violating an order, the court may

hold the violator in contempt and, upon the state's motion, may allow a sanction up to the value of any damages that occur to the state as a result of the violation. The authority to seek sanctions under this subsection is limited to the department or to the attorney general bringing an action on behalf of the state and may not be enforced by any other person.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 559

SENATE BILL NO. 2258

(Senators Fischer, Espegard, Heitkamp)
(Representatives Aarsvold, Carlson, Delmore)

LAKE AGASSIZ WATER AUTHORITY AND GDCD DIRECTOR COMPENSATION

AN ACT to provide for creation of the Lake Agassiz water authority; and to amend and reenact section 61-24-04 of the North Dakota Century Code, relating to compensation of the members of the board of directors of the Garrison Diversion Conservancy District.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-24-04 of the North Dakota Century Code is amended and reenacted as follows:

61-24-04. Compensation of directors. Each member of the board of directors of the district is entitled to receive as compensation from the district ~~sixty two dollars and fifty cents compensation~~ an amount determined by the board of directors not to exceed the amount provided for members of the legislative council under section 54-35-10 per day and must be reimbursed for the member's expenses in the amounts provided in sections 44-08-04 and 54-06-09 while attending meetings of the board or otherwise engaged in the official business of the district.

SECTION 2. Findings and declaration of policy. The legislative assembly declares that many areas and localities in eastern North Dakota do not enjoy adequate quantities of high-quality drinking water; that other areas and localities in eastern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply; that greater economic security and the protection of health and property benefits the land and water resources of this state; and that the promotion of the prosperity and general welfare of all of the people of this state depend on the effective development and utilization of the land and water resources of this state and necessitates and requires the exercise of the sovereign powers of this state and concern a public purpose. To accomplish this public purpose, it is declared necessary that a water authority to store and distribute water to eastern North Dakota be established to provide for the supply and distribution of water to the people of eastern North Dakota for purposes, including domestic, rural water, municipal, livestock, light industrial, and other uses, with primary emphasis on domestic, rural water, and municipal uses; and provide for the future economic welfare and prosperity of the people of this state, and particularly the people of eastern North Dakota, by the bulk purchase of water from the Garrison Diversion Conservancy District delivered by the Red River valley water supply project for beneficial and public uses.

In furtherance of this public purpose, the state water commission may provide for the issuance of bonds in accordance with chapter 61-02 to finance the costs of any project to deliver water to eastern North Dakota. Sections 2 through 6 of this Act do not abrogate or limit the rights, powers, duties, and functions of the state water commission or state engineer, but is supplementary to those rights, powers, duties, and functions.

SECTION 3. Lake Agassiz water authority created. The Lake Agassiz water authority consists of cities and water districts located in that part of the state which is included within the boundaries of: Cavalier, Pembina, Walsh, Nelson, Grand Forks, Griggs, Steele, Traill, Barnes, Cass, Ransom, Sargent, and Richland Counties and that pay dues to the authority. The authority is a governmental agency, body politic and corporate with the authority to exercise the power specified in sections 2 through 6 of this Act, or which may be reasonably implied. Cities and water districts may pay dues to the authority as determined by the authority.

SECTION 4. Lake Agassiz water authority - Board of directors. The authority must be governed by a board of directors selected as follows:

1. One member from a city with a population greater than forty thousand located east of state highway 1 and north of state highway 200.
2. One member from a city with a population greater than forty thousand located east of state highway 1 and south of state highway 200.
3. One member from a city with a population of five thousand but not more than forty thousand located east of state highway 1.
4. One member from a city with a population of less than five thousand located east of state highway 1.
5. Two members from water districts located east of state highway 1 and north of state highway 200.
6. Two members from water districts located east of state highway 1 and south of state highway 200.
7. One member from water districts located east of state highway 1.

City members must be selected for two-year terms by election by cities located east of state highway 1 during the annual meeting of the North Dakota league of cities in every odd-numbered year beginning in 2003. Water district members must be selected for two-year terms by election by water districts located east of state highway 1 during the annual meeting of the North Dakota rural water systems association in every even-numbered year beginning in 2004. The initial selection of members must be at a meeting held by the board of directors of the North Dakota league of cities and by the board of directors of the North Dakota rural water systems association. The initial city members shall serve until the annual meeting of the North Dakota league of cities in 2003 and the initial water district members shall serve until the annual meeting of the North Dakota rural water systems association in 2004. A member may designate an alternate to attend meetings and to act on the member's behalf. The board of directors may designate associate members who are nonvoting members of the board. Notwithstanding the provisions of this section, within two years of the first delivery of water by the Red River valley water supply project, board members must be from a city or water district that has entered a water service contract with the Garrison Diversion Conservancy District.

SECTION 5. Board of directors - Officers - Meetings. The board of directors may adopt such rules and bylaws for the conduct of the business affairs of the authority as it determines necessary, including the time and place of regular meetings of the board and a dues structure for membership in the authority. The board shall elect from its members a chairman and a vice chairman. The board shall also elect a secretary and a treasurer, which offices may be held by the same

individual, and either or both offices may be held by an individual who is not a member of the board. Special meetings of the board may be called by the secretary on order of the chairman or upon written request of a majority of the qualified members of the board. Notice of a special meeting must be mailed to each member of the board at least six days before the meeting, provided that a special meeting may be held at any time when all members of the board are present or consent in writing. The Garrison Diversion Conservancy District shall provide administrative, technical, and legal support for the authority.

SECTION 6. Authority of the district. The board of directors of the Lake Agassiz water authority may:

1. Sue and be sued in the name of the authority.
2. Exercise the power of eminent domain in the manner provided by title 32 for the purpose of acquiring and securing any rights, titles, interests, estates, or easements necessary or proper to carry out the duties imposed by sections 2 through 6 of this Act, and particularly to acquire the necessary rights in land for the construction of pipelines, reservoirs, connections, valves, pumping installations, or other facilities for the storage, transportation, or utilization of water and all other appurtenant facilities used in connection with the authority, or any part thereof.
3. Accept funds, property, and services or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purpose of aiding and promoting the construction, maintenance, and operation of the authority.
4. Cooperate and contract with the state, its agencies, or its political subdivisions in research and investigation or other activities promoting the establishment, construction, development, or operation of the authority.
5. Appoint and fix the compensation and reimbursement of expenses of such employees as the board deems necessary to conduct the business and affairs of the authority and to procure the services of engineers and other technical experts, and to retain attorneys to assist, advise, and act for the authority in its proceedings.
6. Operate and manage the authority to distribute water throughout eastern North Dakota within or outside the territorial boundaries of the authority.
7. Sell or exchange any and all real property purchased or acquired by the authority. All money received from any such sale or exchange must be deposited to the credit of the authority and may be used to pay expenses of the authority.
8. Enter a contract for a supply of water from the Garrison Diversion Conservancy District and to sell, lease, and otherwise contract to furnish any such water for beneficial use to persons or entities within or outside the authority.
9. Borrow money as provided in sections 2 through 6 of this Act.

10. Issue and sell bonds in an amount or amounts determined by the board, including an amount or amounts for costs of issuance and financing, and any necessary reserve funds, for the purpose of financing the cost of a project.
11. Refund and refinance its bonds from time to time as often as it is advantageous and in the interest of the authority.
12. Pledge any and all income, profits, and revenues received by the authority in connection with the operation, lease, sale, or other disposition of all or any part of a project to secure the payment of bonds issued and sold to finance the project.
13. Prescribe, revise, and collect rates, fees, tolls, or charges for the services, facilities, or commodities furnished by the authority, and in anticipation of the collection of the revenues of the authority, issue revenue bonds to finance all or part of the costs of the acquisition, construction, reconstruction, improvement, betterment, or extension of a project.
14. Pledge revenues of the authority to the punctual payment of principal and interest on bonds. A pledge under this subsection applies to the revenues of improvements, betterments, or extensions of the authority which may be constructed or acquired after the issuance of bonds as well as the revenues of existing systems, plants, works, instrumentalities, and properties of any part of the authority improved, bettered, or extended.
15. Make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of its powers or in the performance of its covenants or duties or in order to secure the payment of its bonds, but an encumbrance, mortgage, or other pledge of property of the authority may not be created by any such contract or instrument.
16. Accept from any authorized federal agency loans or grants for the planning, construction, acquisition, lease, or other provision of a project, and to enter into agreements with the agency respecting the loan or grants.
17. Contract debts and borrow money, pledge property of the authority for repayment of indebtedness other than bonded indebtedness, and provide for payment of debts and expenses of the authority.

Property of the authority may not be liable to be forfeited or taken in payment of any bonds issued under sections 2 through 6 of this Act, and debt on the general credit of the authority may not be incurred in any manner for payment of bonds under sections 2 through 6 of this Act.

Approved March 27, 2003
Filed March 28, 2003

WEIGHTS, MEASURES, AND GRADES

CHAPTER 560

SENATE BILL NO. 2112

(Transportation Committee)

(At the request of the Public Service Commission)

WEIGHING AND MEASURING DEVICE TESTING FEES

AN ACT to amend and reenact section 64-02-10 of the North Dakota Century Code, relating to fees for testing and calibrating weighing and measuring devices.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 | \$407.00 <u>171.00</u> |
| 2. Test livestock and vehicle scale | 407.00 <u>171.00</u> |
| 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 | 60.00 <u>96.00</u> |
| 4. Test auxiliary beam on livestock, motor truck, and motor truck dump scale | 24.00 <u>24.00</u> |
| 5. Test overhead monorail, track, hopper, dormant, deck, and hanging scale | 48.00 <u>53.00</u> |
| 6. Test movable platform scale | 40.00 <u>11.00</u> |
| 7. Test counter or computing scale | 40.00 <u>11.00</u> |
| 8. Test hanging scale of fifty pound [22.68 kilogram] capacity or less | 40.00 <u>11.00</u> |
| 9. Test a retail motor fuel device | 40.00 <u>11.00</u> |
| 10. Test or calibrate weighing and measuring standards, per metrologist, per quarter hour or fraction thereof | 45.00 <u>17.00</u> |

11.	Test mobile delivery gasoline and fuel oil meter	21.00 <u>24.00</u>
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	48.00 <u>53.00</u>
13.	Test propane, ag chemical, or liquid fertilizer meter	35.00 <u>39.00</u>
44.	Test truck tank	67.00
<u>14.</u>	Test crane scale	67.00 <u>107.00</u>
46. <u>15.</u>	Test or calibrate weighing and measuring devices other than the above and those set by rule, per inspector per quarter hour or fraction thereof	40.00 <u>11.00</u>
47. <u>16.</u>	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.

Approved March 19, 2003

Filed March 19, 2003

WORKERS' COMPENSATION

CHAPTER 561

HOUSE BILL NO. 1065

(Representative Ruby)

(Senator Mutch)

(At the request of the Workers Compensation Bureau)

WORKFORCE SAFETY AND INSURANCE

AN ACT to amend and reenact sections 65-01-02, 65-01-17, and 65-02-01.1 of the North Dakota Century Code, relating to changing the name of the workers compensation bureau to workforce safety and insurance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁶ **SECTION 1. AMENDMENT.** Section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

65-01-02. Definitions. In this title:

1. "Acute care" means a short course of intensive diagnostic and therapeutic services provided immediately following a work injury with a rapid onset of pronounced symptoms.
2. "Adopted" or "adoption" refers only to a legal adoption effected prior to the time of the injury.
3. "Artificial members" includes only such devices as are substitutes for, and not mere aids to, a natural part, organ, limb, or other part of the body. The term does not include eyeglasses or contact lenses unless the eye is, or eyes are, injured as a result of a compensable injury, and such injury causes a change in sight which requires fitting of eyeglasses or contact lenses not previously worn by the injured worker or requires a change in existing prescription.
4. "Artificial replacements" means mechanical aids including braces, belts, casts, or crutches as may be reasonable and necessary due to compensable injury.
5. "Average weekly wage" means the weekly wages the employee was receiving from all employments at the date of first disability. The average weekly wage determined under this subsection must be rounded to the nearest dollar. In cases where the employee's wages

²⁶⁶ Section 65-01-02 was also amended by section 1 of House Bill No. 1060, chapter 562, and section 2 of House Bill No. 1060, chapter 562.

are not fixed by the week, they must be determined by using the first applicable formula from the schedule below:

- a. For seasonal employment, during the first consecutive days of disability up to twenty-eight days the average weekly wage is calculated pursuant to the first applicable formula in subdivisions b through g of this subsection, and after that are calculated as one-fiftieth of the total wages from all occupations during the twelve months preceding the date of first disability or during the tax year preceding the date of first disability, or an average of the three tax years preceding the date of first disability, whichever is highest and for which accurate, reliable, and complete records are readily available.
 - b. The "average weekly wage" of a self-employed employee is determined by the following formula: one-fiftieth of the net profits based on the preceding tax year or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available, plus depreciation, meal and travel expenses, and any expenses chargeable to use of personal residence as allowed under the federal tax laws.
 - c. Hourly or daily rate multiplied by number of hours or days worked per seven-day week.
 - d. Monthly rate multiplied by twelve months and divided by fifty-two weeks.
 - e. Biweekly rate divided by two.
 - f. The usual wage paid other employees engaged in similar occupations.
 - g. A wage reasonably and fairly approximating the weekly wage lost by the claimant during the period of disability.
6. "Average weekly wage in the state" means the determination made of the average weekly wage in the state by job service North Dakota on or before July first of each year, computed to the next highest dollar.
 7. "Board" means the ~~North Dakota workers compensation~~ workforce safety and insurance board of directors.
 8. "Brother" and "sister" include a stepbrother and a stepsister, a half brother and a half sister, and a brother and sister by adoption. The terms do not include a married brother or sister unless that person actually is dependent.
 9. "~~Bureau~~" means the ~~North Dakota workers compensation bureau, or the director, or any department heads, assistants, or employees of the bureau designated by the director, to act within the course and scope of their employment in administering the policies, powers, and duties of this title.~~
 40. "Child", for determining eligibility for benefits under chapter 65-05, means a child under eighteen years of age residing in the employee's

household or to whom the employee has a legal obligation of support; or a child eighteen years of age or over and physically or mentally incapable of self-support who is actually dependent upon the employee for support; or any child between eighteen and twenty-two years of age who is enrolled as a full-time student in any accredited educational institution who is actually dependent upon the employee for support. This term includes a legitimate child, a stepchild, adopted child, posthumous child, foster child, and acknowledged illegitimate child, but does not include a married child unless actually dependent.

44- 10. "Compensable injury" means an injury by accident arising out of and in the course of hazardous employment which must be established by medical evidence supported by objective medical findings.

a. The term includes:

- (1) Disease caused by a hazard to which an employee is subjected in the course of employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. Disease includes effects from radiation.
- (2) An injury to artificial members.
- (3) Injuries due to heart attack or other heart-related disease, stroke, and physical injury caused by mental stimulus, but only when caused by the employee's employment with reasonable medical certainty, and only when it is determined with reasonable medical certainty that unusual stress is at least fifty percent of the cause of the injury or disease as compared with all other contributing causes combined. Unusual stress means stress greater than the highest level of stress normally experienced or anticipated in that position or line of work.
- (4) Injuries arising out of employer-required or supplied travel to and from a remote jobsite or activities performed at the direction or under the control of the employer.
- (5) An injury caused by the willful act of a third person directed against an employee because of the employee's employment.
- (6) A mental or psychological condition caused by a physical injury, but only when the physical injury is determined with reasonable medical certainty to be at least fifty percent of the cause of the condition as compared with all other contributing causes combined, and only when the condition did not preexist the work injury.

b. The term does not include:

- (1) Ordinary diseases of life to which the general public outside of employment is exposed or preventive treatment for communicable diseases, except that the bureau may pay for preventive treatment for significant exposures documented

by emergency medical services providers under chapter 23-07.3, for significant exposures for the employees of licensed facilities as defined by chapter 23-07.3, and for exposure to rabies occurring in the course of employment.

- (2) A willfully self-inflicted injury, including suicide or attempted suicide, or an injury caused by the employee's willful intention to injure or kill another.
- (3) Any injury caused by the use of intoxicants or the illegal use of controlled substances.
- (4) An injury that arises out of an altercation in which the injured employee is an aggressor. This paragraph does not apply to public safety employees, including law enforcement officers or private security personnel who are required to engage in altercations as part of their job duties if the altercation arises out of the performance of those job duties.
- (5) An injury that arises out of an illegal act committed by the injured employee.
- (6) An injury that arises out of an employee's voluntary nonpaid participation in any recreational activity, including athletic events, parties, and picnics, even though the employer pays some or all of the cost of the activity.
- (7) Injuries attributable to a preexisting injury, disease, or other condition, including when the employment acts as a trigger to produce symptoms in the preexisting injury, disease, or other condition unless the employment substantially accelerates its progression or substantially worsens its severity.
- (8) A nonemployment injury that, although acting upon a prior compensable injury, is an independent intervening cause of injury.
- (9) A latent or asymptomatic degenerative condition, caused in substantial part by employment duties, which is triggered or made active by a subsequent injury.
- (10) A mental injury arising from mental stimulus.

- ~~42.~~ 11. "Date of first disability" means the first date the employee was unable to work because of a compensable injury.
- ~~43.~~ 12. "Date of maximum medical improvement" or "date of maximum medical recovery" means the date after which further recovery from, or lasting improvement to, an injury or disease can no longer reasonably be anticipated based upon reasonable medical probability.
- ~~44.~~ 13. "Director" means the director of the bureau.
- ~~45.~~ 14. "Disability" means loss of earnings capacity and may be permanent total, temporary total, or partial.

- ~~46-~~ 15. "Doctor" means doctor of medicine or osteopathy, chiropractor, dentist, optometrist, podiatrist, or psychologist acting within the scope of the doctor's license.
- ~~47-~~ 16. "Employee" means a person who performs hazardous employment for another for remuneration unless the person is an independent contractor under the "common law" test.
- a. The term includes:
- (1) All elective and appointed officials of this state and its political subdivisions, including municipal corporations and including the members of the legislative assembly, all elective officials of the several counties of this state, and all elective peace officers of any city.
 - (2) Aliens.
 - (3) County general assistance workers except those who are engaged in repaying to counties moneys that the counties have been compelled by statute to expend for county general assistance.
 - (4) Minors, whether lawfully or unlawfully employed; a minor is deemed sui juris for the purposes of this title, and no other person has any claim for relief or right to claim workers' compensation benefits for any injury to a minor worker, but in the event of the award of a lump sum of benefits to a minor employee, the lump sum may be paid only to the legally appointed guardian of the minor.
- b. The term does not include:
- (1) Any person whose employment is both casual and not in the course of the trade, business, profession, or occupation of that person's employer.
 - (2) Any person who is engaged in an illegal enterprise or occupation.
 - (3) The spouse of an employer or a child under the age of twenty-two of an employer. For purposes of this paragraph and section 65-07-01, "child" means any legitimate child, stepchild, adopted child, foster child, or acknowledged illegitimate child.
 - (4) Any real estate broker or real estate salesperson, provided the person meets the following three requirements:
 - (a) The salesperson or broker must be a licensed real estate agent under section 43-23-05.
 - (b) Substantially all of the salesperson's or broker's remuneration for the services performed as a real estate agent must be directly related to sales or other efforts rather than to the number of hours worked.

- (c) A written agreement must exist between the salesperson or broker and the person or firm for whom the salesperson or broker works, which agreement must provide that the salesperson or broker will not be treated as an employee but rather as an independent contractor.
 - (5) The members of the board of directors of a business corporation who are not employed in any capacity by the corporation other than as members of the board of directors.
 - (6) Any individual delivering newspapers or shopping news, if substantially all of the individual's remuneration is directly related to sales or other efforts rather than to the number of hours worked and a written agreement exists between the individual and the publisher of the newspaper or shopping news which states that the individual is an independent contractor.
 - (7) An employer.
 - c. Persons employed by a subcontractor, or by an independent contractor operating under an agreement with the general contractor, for the purpose of this chapter are deemed to be employees of the general contractor who is liable and responsible for the payments of premium for the coverage of these employees until the subcontractor or independent contractor has secured the necessary coverage and paid the premium for the coverage. This subdivision does not impose any liability upon a general contractor other than liability to the bureau for the payment of premiums which are not paid by a subcontractor or independent contractor.
- 48- 17. "Employer" means a person who engages or received the services of another for remuneration unless the person performing the services is an independent contractor under the "common law" test. The term includes:
- a. The state and all political subdivisions thereof.
 - b. All public and quasi-public corporations in this state.
 - c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
 - d. The legal representative of any deceased employer.
 - e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation having one or more employees as herein defined.
 - f. The president, vice presidents, secretary, or treasurer of a business corporation, but not members of the board of directors of a business corporation who are not also officers of the corporation.
 - g. The managers of a limited liability company.

- h. The president, vice presidents, secretary, treasurer, or board of directors of an association or cooperative organized under chapter 6-06, 10-12, 10-13, 10-15, 36-08, or 49-21.
 - i. The clerk, assessor, treasurer, or any member of the board of supervisors of an organized township, if the person is not employed by the township in any other capacity.
- ~~49.~~ 18. "Fee schedule" means the payment formulas established in the bureau publication entitled "Medical and Hospital Fees".
- ~~20.~~ 19. "Fund" means the ~~North Dakota workers' compensation workforce safety and insurance~~ fund.
- ~~24.~~ 20. "Grandchild" and the terms defined in subsections ~~7~~ 8 and 9 include only a person who, at the time of the death of the deceased employee, is under eighteen years of age, or if over that age, is incapable of self-support.
- ~~22.~~ 21. "Hazardous employment" means any employment in which one or more employees are employed regularly in the same business or in or about the establishment except:
- a. Agricultural or domestic service.
 - b. Any employment of a common carrier by railroad.
 - c. Any employment for the transportation of property or persons by nonresidents, where, in such transportation, the highways are not traveled more than seven miles [11.27 kilometers] and return over the same route within the state of North Dakota.
 - d. All members of the clergy and employees of religious organizations engaged in the operation, maintenance, and conduct of the place of worship.
- ~~23.~~ 22. "Health care provider" means a doctor or any recognized practitioner providing skilled services pursuant to the prescription of, or under the supervision or direction of, a doctor.
23. "Organization" means workforce safety and insurance, or the director, or any department head, assistant, or employee of workforce safety and insurance designated by the director, to act within the course and scope of that person's employment in administering the policies, powers, and duties of this title.
24. "Parent" includes a stepparent and a parent by adoption.
25. "Permanent impairment" means the loss of or loss of use of a member of the body existing after the date of maximum medical improvement and includes disfigurement resulting from an injury.
26. "Permanent total disability" means an employee is determined incapable of rehabilitation of earnings capacity as determined by the:
- a. Nature of injury.

- b. Degree of physical impairment.
 - c. Education.
 - d. Work history.
 - e. Vocational rehabilitation potential.
27. "Rehabilitation services" means nonmedical services reasonably necessary to restore a disabled employee to substantial gainful employment as defined by section 65-05.1-01 as near as possible. The term may include vocational evaluation, counseling, education, workplace modification, and vocational retraining including on-the-job training or training for alternative employment with the same employer, and job placement assistance.
28. "Seasonal employment" includes an occupation that has periods of forty-five consecutive days of not receiving wages.
29. "Spouse" includes only the decedent's husband or wife who was living with the decedent or was dependent upon the decedent for support at the time of injury.
30. "Utilization review" means the initial and continuing evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on medically accepted standards. The evaluation must be accomplished by means of a system that identifies the utilization of medical services, based on medically accepted standards, and which refers instances of possible inappropriate utilization to the bureau to obtain opinions and recommendations of expert medical consultants to review individual cases for which administrative action may be deemed necessary.
31. "Wages" means an employee's remuneration from all employment reportable to the internal revenue service as earned income for federal income tax purposes. For purposes of chapter 65-04, "wages" may not include dismissal or severance pay.

SECTION 2. AMENDMENT. Section 65-01-17 of the North Dakota Century Code is amended and reenacted as follows:

65-01-17. Agricultural employment exemption - Custom agricultural operations. For purposes of the agricultural service exception to hazardous employment under subsection ~~22~~ 21 of section 65-01-02, an agricultural employer that engages in a custom agricultural operation, which is the planting, care, or harvesting of grain or field crops on a contract-for-hire basis, exclusive of hauling by special contractor, retains the exemption unless the employer's custom agricultural operations are based outside this state or require more than thirty actual working days of operation during the calendar year.

SECTION 3. AMENDMENT. Section 65-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:

65-02-01.1. Workers compensation bureau. ~~The North Dakota legislative council is hereby authorized to~~ may delete, where appropriate, "workmen's workers compensation bureau", "North Dakota workers compensation bureau", or any derivatives of those terms, which when used in context indicate an intention to refer to those terms, wherever it appears they appear in the North Dakota Century Code or in the supplements thereto and to insert in lieu of each deletion "workers compensation bureau workforce safety and insurance". Such changes are to be made when any volume or supplement of the North Dakota Century Code is being reprinted. It is the intent of the legislative assembly that ~~the workers compensation bureau shall~~ workforce safety and insurance be substituted for, shall take any action previously to be taken by, and shall perform any duties previously to be performed by the ~~workmen's workers~~ compensation bureau. The legislative council may replace "bureau", where appropriate, wherever the term appears in the North Dakota Century Code or in the supplements of the North Dakota Century Code, with the term "organization". These changes are to be made when any volume or supplement is being reprinted.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 562

HOUSE BILL NO. 1060

(Representative Wald)

(Senator J. Klein)

(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION LAW REVISIONS

AN ACT to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to retaliation by an employer against an employee for seeking workers' compensation benefits; to amend and reenact subdivision b of subsection 5 and subsection 28 of section 65-01-02, sections 65-02-11 and 65-02-20, subsection 5 of section 65-05-07, section 65-05-10, subsection 1 of section 65-05-17, and sections 65-05-21, 65-05-22, 65-05-25, and 65-05-36 of the North Dakota Century Code, relating to calculation of the average weekly wage of self-employed employers, the definition of seasonal employment, subpoenas issued by the workers compensation bureau, dispute resolution of managed care decisions, modifications to real estate for catastrophically injured workers, partial disability benefits, workers' compensation death benefits, structured settlements, and the preferred worker program; to repeal sections 65-02-15 and 65-05-24 of the North Dakota Century Code, relating to binding arbitration in workers' compensation disputes and workers' compensation death benefits; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶⁷ **SECTION 1. AMENDMENT.** Subdivision b of subsection 5 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

- b. The "average weekly wage" of a self-employed ~~employee~~ employer is determined by the following formula: ~~one-fiftieth one~~ fifty-second of the net ~~profits based on~~ earnings reported the preceding tax year or preceding fifty-two weeks whichever is higher if accurate, reliable, and complete records for those fifty-two weeks are readily available, ~~plus depreciation, meal and travel expenses, and any expenses chargeable to use of personal residence as allowed under the federal tax laws.~~

²⁶⁸ **SECTION 2. AMENDMENT.** Subsection 28 of section 65-01-02 of the North Dakota Century Code is amended and reenacted as follows:

28. "Seasonal employment" includes ~~an occupation that has periods of forty-five consecutive days of not receiving wages~~ occupations that are not permanent or that do not customarily operate throughout the entire

²⁶⁷ Section 65-01-02 was also amended by section 2 of House Bill No. 1060, chapter 562, and section 1 of House Bill No. 1065, chapter 561.

²⁶⁸ Section 65-01-02 was also amended by section 1 of House Bill No. 1060, chapter 562, and section 1 of House Bill No. 1065, chapter 561.

year. Seasonal employment is determined by what is customary with respect to the employer at the time of injury.

SECTION 3. AMENDMENT. Section 65-02-11 of the North Dakota Century Code is amended and reenacted as follows:

65-02-11. Process and procedure - Investigations - Examination of witnesses - Costs - Penalty. Except as otherwise provided by this title, process and procedure under this title is governed by chapter 28-32. The bureau may make investigation as in its judgment is best calculated to ascertain the substantial rights of all the parties. Any member of the bureau, and any person specifically designated by the bureau may examine witnesses and records, with or without subpoena, examine, investigate, copy, photograph, and take samples at any pertinent location or facility, administer oaths to witnesses, require the attendance of witnesses without fee whenever the testimony is taken at the home, office, or place of work of those witnesses, and generally to do anything necessary to facilitate or promote the efficient administration of this title. The bureau may issue a subpoena to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and any other records deemed necessary by the bureau. Subpoenas may be enforced by applying to a 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 to comply with the order of the district court is contempt as provided in chapter 27-10. The bureau shall pay the costs of any medical examination, scientific investigation, medical or expert witness appearance or report, requested or approved by the bureau, relating to a claim for benefits, from the bureau general fund.

SECTION 4. AMENDMENT. Section 65-02-20 of the North Dakota Century Code is amended and reenacted as follows:

65-02-20. Bureau to establish managed care program. The bureau shall establish a managed care program, including utilization review and bill review, to effect the best medical solution for an injured employee in a cost-effective manner upon a finding by the bureau that the employee suffered a compensable injury. The program shall operate according to guidelines adopted by the bureau and shall provide for medical management of claims within the bounds of workers' compensation law. Information compiled and analysis performed pursuant to a managed care program which relate to patterns of treatment, cost, or outcomes by health care providers are confidential and are not open to public inspection to the extent the information and analysis identify a specific health care provider, except to the specific health care provider, bureau employees, or persons rendering assistance to the bureau in the administration of this title. If an employee, employer, or medical provider disputes a managed care decision, the employee, employer, or medical provider shall request binding dispute resolution on the decision. The bureau shall make rules providing for the procedures for dispute resolution. Dispute resolution under this section is not subject to chapter 28-32 or section 65-01-16 ~~or 65-02-15~~. A dispute resolution decision under this section requested by a medical provider concerning payment for medical treatment already provided or a request for diagnostic tests or treatment is not reviewable by any court. A dispute resolution decision under this section requested by an employee is reviewable by a court only if medical treatment has been denied to the employee. A dispute resolution decision under this section requested by an employer is reviewable by a court only if medical treatment is awarded to the employee. The dispute resolution decision may be reversed only if the court finds that there has been an abuse of discretion in the dispute resolution process. Any person providing binding dispute resolution services

under this section is exempt from civil liability relating to the binding dispute resolution process and decision.

SECTION 5. AMENDMENT. Subsection 5 of section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

5. The bureau may not pay more than ~~twenty~~ twenty five 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 ~~twenty~~ twenty five thousand dollar limit is for the life of the injured employee, regardless of any subsequent claim. This subsection does not allow the bureau to purchase any real estate or motor vehicles.

SECTION 6. AMENDMENT. Section 65-05-10 of the North Dakota Century Code is amended and reenacted as follows:

65-05-10. Partial disability - Weekly benefit. If the injury causes temporary partial disability resulting in decrease of earning capacity, the disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury and the employee's wage earning capacity after the injury in the same or another employment. ~~However, the partial~~ Partial disability benefits ~~may not exceed benefit rates as defined in section 65-05-09~~ are subject to a maximum of one hundred ten percent of the average weekly wage in the state. The combined partial disability benefits, dependency allowance, and postinjury wage earning capacity may not exceed the preinjury weekly wage of the employee after deductions for social security and federal income tax.

1. The benefits provided by this section are available to any otherwise eligible worker, providing the loss of earning capacity occurs after July 1, 1989. Partial loss of earning capacity occurring prior to July 1, 1989, must be paid at a rate to be fixed by the bureau.
2. Benefits must be paid during the continuance of partial disability, not to exceed a period of five years. The bureau may waive the five-year limit on the duration of partial disability benefits in cases of catastrophic injury as defined in section 65-05.1-06.1 or when the injured worker is working and has long-term restrictions verified by clear and convincing objective medical and vocational evidence that limits the injured worker to working less than twenty-eight hours per week because of the compensable work injury. This subsection is effective for partial loss of earnings capacity occurring after June 30, 1991.
3. The employee's earnings capacity may be established by expert vocational evidence of a capacity to earn in the statewide job pool where the worker lives. Actual postinjury earnings are presumptive evidence of earnings capacity where the job employs the employee to full work capacity in terms of hours worked per week, and where the job is in a field related to the employee's transferable skills. The presumption may be rebutted by competent evidence from a vocational expert that the employee's actual earnings do not fairly reflect the employee's earnings capacity in the statewide job pool, considering the employee's capabilities, education, experience, and skills.

SECTION 7. AMENDMENT. Subsection 1 of section 65-05-17 of the North Dakota Century Code is amended and reenacted as follows:

1. To the decedent's spouse or to the guardian of the children of the decedent, an amount equal to the benefit rate for total disability under section 65-05-09. All recipients of benefits under this subsection are eligible for benefits at the rate provided in this section, regardless of the date of death of the deceased employee. These benefits continue until the death ~~or remarriage~~ of the decedent's spouse; or, if the surviving children of the decedent are under the care of a guardian, until those children no longer meet the definition of "child" in this title. If there is more than one guardian for the children who survive the decedent, the bureau shall divide the death benefits equally among the children and shall pay benefits to the children's guardians. Total death benefits, including supplementary benefits, paid on any one claim may not exceed ~~one hundred ninety-seven~~ two hundred fifty thousand dollars. ~~All recipients of benefits under this subsection are eligible for benefits at the rate provided in this section, regardless of the date of death of the deceased employee.~~

SECTION 8. AMENDMENT. Section 65-05-21 of the North Dakota Century Code is amended and reenacted as follows:

65-05-21. Marriage settlement to spouse. If a spouse who receives compensation under the provisions of subsection 1 of section 65-05-17 remarries, there shall be paid to such spouse a lump sum equal to one hundred four weeks' compensation. If, prior to such marriage, such spouse has received a partial lump sum settlement which covers all or any portion of the said one hundred four weeks following such spouse's marriage, the amount of such partial lump sum settlement which covers all or any part of the said one hundred four weeks following such spouse's marriage shall be deducted from such marriage settlement, and the spouse shall receive only the remainder, if any, over and above such deduction. Any judgment annulling such marriage shall not reinstate the right of such spouse to compensation if the action for annulment is instituted more than six months after the marriage. The provisions of this section apply only to remarriages that occur before August 1, 2003, regardless of the date of injury or date of death of the decedent.

SECTION 9. AMENDMENT. Section 65-05-22 of the North Dakota Century Code is amended and reenacted as follows:

65-05-22. Adjustment on cessation of compensation for death to one beneficiary. Upon the cessation of compensation payable to a beneficiary under the provisions of this chapter, the compensation of the remaining persons entitled to compensation for the unexpired part of the period during which their compensation is payable, shall be that which such persons would have received if they had been the only persons entitled to compensation at the time of the decedent's death. ~~This section, however, shall not be construed to increase the compensation of the children of a widow or widower upon remarriage of the widow or widower.~~

SECTION 10. AMENDMENT. Section 65-05-25 of the North Dakota Century Code is amended and reenacted as follows:

65-05-25. Lump sum ~~settlement~~ settlements - Granted in discretion of bureau - How computed.

1. If an employee is determined to be permanently and totally disabled, the bureau may pay the employee a lump sum equal to the present value of all future payments of compensation. The probability of the employee's death before the expiration of the period during which the employee is

entitled to compensation must be determined by generally accepted mortality studies. The bureau may not pay the employee a lump sum unless it has first determined that there is clear and convincing evidence that the lump sum payment is in the best interest of the employee. Best interest of the employee may not be deemed to exist because the employee can invest the lump sum in another manner to realize a better yield. The employee must show a specific plan of rehabilitation which will enable the employee to return to work as a productive member of society.

2. The bureau and an employee may compromise to resolve a disputed claim. The contract of settlement made is enforceable by the parties. The contract may provide that the employee shall utilize the funds to engage in certain rehabilitation programs. If the employee breaches the contract, the bureau may require the employee to repay the benefits received under the agreement. In cases in which the extent of disability is disputed and resolved by agreement, the concept of reopening a disability claim due to significant change in medical condition is inapplicable.
3. If death results from an injury under the conditions specified in section 65-05-16, the bureau may pay the decedent's spouse or the guardian of the decedent's children a lump sum equal to the present value of all future payments of compensation.
4. Notwithstanding any other provision of law, structured settlements may be used to resolve a dispute or to provide for payment of ongoing future benefits. The bureau may contract with a third-party vendor to provide structured settlement payments.

SECTION 11. AMENDMENT. Section 65-05-36 of the North Dakota Century Code is amended and reenacted as follows:

65-05-36. Preferred worker program - Continuing appropriation. For purposes of this section, "preferred worker" means a worker who has incurred a compensable injury that resulted in a disability that poses a substantial obstacle to employment. The bureau may provide assistance as determined appropriate to preferred workers or employers who employ a preferred worker. In addition, employers who apply for and are approved as a preferred worker employer may not be assessed premiums on a preferred worker's salary for three years from the date of hiring. The bureau may not charge claims costs incurred as a result of an injury sustained by a preferred worker against the preferred worker's employer's account during the first three years after the worker is hired. The bureau shall charge those claims costs to the general fund. The bureau may adopt rules to regulate and manage the preferred worker program authorized by this section. An employer or preferred worker may not appeal a bureau decision not to provide assistance to that employer or preferred worker under this section. Money in the workers' compensation fund is appropriated on a continuing basis to provide the assistance authorized under this section.

SECTION 12. A new section to chapter 65-05 of the North Dakota Century Code is created and enacted as follows:

Retaliation by employer prohibited - Action for damages - Penalty. An employer who willfully discharges or willfully threatens to discharge an employee for seeking or making known the intention to seek workers' compensation benefits is

liable in a civil action for damages incurred by the employee, including reasonable attorneys' fees. Damages awarded under this section may not be offset by any workers' compensation benefits to which the employee is entitled. A willful violation of this section is a class A misdemeanor.

SECTION 13. REPEAL. Sections 65-02-15 and 65-05-24 of the North Dakota Century Code are repealed.

SECTION 14. APPLICATION OF ACT. Section 6 of this Act applies to all claims for benefits filed after the effective date of this Act, regardless of the date of injury. The increase in the maximum amount of death benefits payable from one hundred ninety-seven thousand dollars to two hundred fifty thousand dollars in section 7 of this Act applies only to those deaths occurring after the effective date of this Act.

Approved April 7, 2003

Filed April 7, 2003

CHAPTER 563

SENATE BILL NO. 2298 (Senators J. Lee, Fischer, Grindberg) (Representatives Koppelman, Wieland)

WORKERS' COMPENSATION STAFFING COVERAGE

AN ACT to amend and reenact section 65-01-08 of the North Dakota Century Code, relating to workers' compensation coverage of staffing services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-08 of the North Dakota Century Code is amended and reenacted as follows:

65-01-08. Contributing employer ~~or~~ and staffing service relieved from liability for injury to employee.

1. If a local or out-of-state employer secured the payment of compensation to that employer's employees by contributing premiums to the fund, the employee, and the parents in the case of a minor employee, or the representatives or beneficiaries of either, do not have a claim for relief against the contributing employer or against any agent, servant, or other employee of the employer for damages for personal injuries, but shall look solely to the fund for compensation.
2. If a client company contracts with a staffing service for an employee's services, the client company and the staffing service are immune from any claim for relief by that employee or by another employee of the client company or staffing service, to the same extent granted under this title to contributing employers if the client company or staffing service secured the payment of compensation in accordance with this title. ~~The~~ Although an account must include the name of the staffing service, the employee is considered an employee of the client company and staffing service for purposes of application of immunity for injuries incurred by or caused by that employee.
3. For purposes of this section:
 - a. "Client company" means a person that contracts to receive services within the course of that person's usual business from ~~an employee of~~ a staffing service or that contracts to lease any or all of that person's employees from a staffing service.
 - b. "Staffing service" means an employer in the business of providing the employer's employees to persons to perform services within the course of that person's usual businesses. The term includes professional employer organizations' staff leasing companies, employee leasing organizations, and temporary staffing companies. The term "staffing service" must be broadly construed to encompass entities that offer services provided by a professional employer organization, staff leasing company, employee leasing

organization, or temporary staffing company regardless of the term used.

(1) Within the meaning of staffing service as used in this section, "temporary staffing," or "temporary staffing service" means an arrangement by which an employer hires its own employees and assigns the employees to a client company to support or supplement the client company's workforce in a special work situation including:

(a) An employee absence;

(b) A temporary skill shortage;

(c) A seasonal workload; or

(d) A special assignment or project with a targeted end date.

(2) The term does not include arrangements in which the majority of the client company's workforce has been assigned by a temporary staffing service for a period of more than twelve consecutive months.

4. A staffing service that provides only temporary staffing services is the employee's employer. The temporary staffing service shall maintain a workers' compensation account in the temporary staffing service's name and report the wages for those workers annually to the bureau. All other staffing services shall:

a. Report annually the payroll detail for each North Dakota client company.

b. Maintain complete and separate records of the payroll of the staffing service's client companies. Claims must be separately identified by the staffing service for each client company.

c. Share employer responsibilities with the client company, including retention of the authority to hire, terminate, discipline, and reassign employees. If the contractual agreement between a staffing service and a client company is terminated, the employees become the sole employees of the client company.

d. Notify the bureau of the client company's name, workers' compensation account number, and the date the staffing service began providing services to the client company. The staffing service shall provide this information upon entering an agreement with a client company, but no later than fifteen days from the effective date of the written agreement.

e. Supply the bureau with a copy of the agreement between the staffing service and client company.

f. Notify the bureau upon termination of any agreement with a client company, but no later than fifteen days from the effective date of termination.

- g. Notify the staffing service's client companies of an "uninsured" status for failure to pay workers' compensation premiums within fifteen days of notice by the bureau.
5. A staffing service that provides both temporary and long-term employees is subject to the reporting requirements associated with the type of employee provided to the client company.
6. a. The bureau shall maintain all employer data for each client company requiring coverage under this title. If a client company enters an agreement with a staffing service, the bureau shall generate a master billing for the staffing service detailing the staffing service's client companies.
- b. Rate classifications for employees provided by a staffing service must be those which would apply as if the work were performed by the employees of the client company. A client company is eligible for bureau safety discount and dividend programs. If a client company enters an agreement with a staffing service, the client company shall retain the client company's experience rate, if applicable.
- c. Both a staffing service and client company under this section are considered employers for purposes of section 65-04-26.1. A staffing service that provides employees to a client company that has been determined to be uninsured or ineligible for coverage under sections 65-04-27.1 and 65-04-33 may not secure workers' compensation coverage for those employees.
7. a. The bureau shall determine whether an entity is a staffing service. If the bureau determines an entity is a staffing service, the bureau may further determine if the entity is a temporary staffing service. In rendering either determination, the bureau may issue a decision under section 65-04-32. If the bureau determines an entity is not a staffing service, the client company shall maintain a workers' compensation account and pay the premium for coverage of the employees.
- b. The factors the bureau may consider in determining whether an entity is a staffing service include the number of client companies handled by the staffing service, the length of time the staffing service has been in existence, the extent to which the staffing service extends services to the general public, the degree to which the client company and staffing service are separate and unrelated business entities, the repetition of officers or managers between the client company and staffing service, and the extent to which a client company has an ownership or other interest in the staffing service. The bureau also may consider the scope of the services provided by the staffing service, the relationship between the staffing service and the client company's workers, the written agreement between the staffing service and the client company, and any other factor deemed relevant by the bureau.
- c. The bureau may require information from any staffing service, including a list of current client company accounts, staffing assignments, payroll information, and rate classification

information. A client company shall provide any information requested by the bureau regarding any staffing service.

8. The bureau may adopt rules consistent with this section which further define client company and staffing service and which provide a procedure by which the bureau may determine whether an entity meets these definitions.

Approved March 26, 2003

Filed March 26, 2003

CHAPTER 564**HOUSE BILL NO. 1149**

(Representative Froseth)

(Senator Mutch)

(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION LAW REVISIONS

AN ACT to amend and reenact sections 65-01-09, 65-04-03.1, 65-04-04, 65-04-15, subsection 1 of section 65-04-26.1, subsections 1 and 2 of section 65-04-32, subsection 3 of section 65-04-33, sections 65-05-07.2, 65-05-28.1, 65-06-01, 65-06-02, 65-06-03, and 65-06-04 of the North Dakota Century Code, relating to the workers compensation bureau's subrogation interests and participation in third-party actions, elimination of the expiration date for the state entities account, employer certificates of coverage, release of information from employer files, personal liability for failure to pay premiums or file premium reports, notice of decisions issued by the workers compensation bureau affecting employer accounts, the penalty structure for failure to secure workers' compensation coverage, employer medical assessments, eligibility of an employer to select preferred providers to render medical treatment, and emergency and disaster volunteers and volunteer firefighters; to repeal section 65-04-19.2 and chapter 65-14 of the North Dakota Century Code, relating to state agency participation in the workers' compensation risk management program and the employee information program on hazardous substances; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-09 of the North Dakota Century Code is amended and reenacted as follows:

65-01-09. Injury through negligence of third person - Option of employee - Fund subrogated when claim filed. When an injury or death for which compensation is payable under provisions of this title shall have been sustained under circumstances creating in some person other than the fund a legal liability to pay damages in respect thereto, the injured employee, or the employee's dependents may claim compensation under this title and proceed at law to recover damages against such other person. The fund is subrogated to the rights of the injured employee or the employee's dependents to the extent of fifty percent of the damages recovered up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits for the injured employee. The bureau's subrogation interest may not be reduced by settlement, compromise, or judgment. The action against such other person may be brought by the injured employee, or the employee's dependents in the event of the employee's death. Such action shall be brought in the injured employee's or in the employee's dependents' own right and name and as trustee for the bureau for the subrogation interest of the bureau. However, if the director chooses not to participate in a health care malpractice action, the fund has no subrogation interest and no obligation to pay fees or costs under this section. If the injured employee or the employee's dependents do not institute suit within sixty days after date of injury, the bureau may bring the action in its own name and as trustee for the injured employee or the employee's dependents and retain as its subrogation interest the full amount it has

paid or would otherwise pay in the future in compensation and benefits to the injured employee or the employee's dependents. Within sixty days after both the injured employee and the bureau have declined to commence an action against a third person as provided above, the employer may bring the action in the employer's own name or in the name of the employee, or both, and in trust for the bureau and for the employee. The party bringing the action may determine if the trial jury should be informed of the trust relationship. If the action is brought by the injured employee or the employee's dependents, or the employer as provided above, the bureau shall pay fifty percent of the costs of the action, exclusive of attorney fee, when such costs are incurred. If there is no recovery of damages in the action, this shall be a cost of the bureau to be paid from the bureau general fund. When there is recovery of damages in the action, the costs of the action, exclusive of attorney's fees, must be prorated and adjusted on the percentage of the total subrogation interest of the bureau recovered to the total recovery in the action. The bureau shall pay attorney fees to the injured employee's attorney from the bureau general fund as follows:

1. Twenty percent of the subrogation interest recovered for the bureau when legal action is not commenced.
2. Twenty-five percent of the subrogation interest recovered for the bureau when action is commenced and settled before judgment.
3. Thirty-three and one-third percent of the subrogation interest recovered for the bureau when recovered through judgment.

The above provisions as to costs of the action and attorney fees is effective only when the injured employee advises the bureau in writing the name and address of the employee's attorney, and that the employee has employed such attorney for the purpose of collecting damages or of bringing legal action for recovery of damages. If a claimant fails to pay the bureau's subrogation interest within thirty days of receipt of a recovery in a third party action, the bureau's subrogation interest is the full amount of the damages recovered, up to a maximum of the total amount it has paid or would otherwise pay in the future in compensation and benefits to the injured employee or the employee's dependents, and no costs or attorney fees will be paid from the bureau's subrogation interest.

SECTION 2. AMENDMENT. Section 65-04-03.1 of the North Dakota Century Code is amended and reenacted as follows:

65-04-03.1. (~~Effective through June 30, 2003~~) State entities account - Continuing appropriation - Report to budget section.

1. The bureau shall establish a single workers' compensation account for state entities covered by chapter 32-12.2. The bureau shall use the combined payroll, premium, and loss history of selected agencies to determine future experience rates, dividends, assessments, and premiums. Classifications and premium rates must be based on the hazards and risks of the different occupations covered by this account. The payroll reporting period for this account is for a fiscal year of July first through June thirtieth. The office of management and budget shall furnish combined payroll information to the bureau in a format prescribed by the bureau.
2. Workers' compensation premiums from state entities covered by chapter 32-12.2 must be deposited in the risk management 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 workers' compensation premiums for state agencies and to pay workers' compensation claims costs not covered by the deductible contract. 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.

3. A state entity covered by chapter 32-12.2 shall participate in the risk management workers' compensation program unless exempted by the director of the office of management and budget.
4. The risk management division of the office of management and budget shall administer the account's internal workers' compensation return-to-work program. Every state entity is required to participate in the return-to-work program. The program may include assigning employees to agencies other than the agency for which the employee worked on the date of the injury.
5. The office of management and budget may adopt rules to administer the risk management workers' compensation program. The workers compensation bureau and the risk management division of the office of management and budget periodically shall report to the budget section of the legislative council on the success of this program.

SECTION 3. 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 bureau for the employment or occupation of the employer. The amount must be determined by the classifications, rules, and rates made and published by the bureau 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 bureau shall mail to the employer a certificate specifying that the payment has been made. The certificate, attested by the seal of the bureau, 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 for the period indicated on the certificate. If an employer defaults on premium payments after a certificate has been issued, the bureau may revoke that employer's certificate. The bureau shall provide that premiums to be paid by school districts, townships, and all public corporations or agencies, except municipal corporations, fall due at the end of the fiscal year of 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 bureau 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 bureau. 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 workers' compensation 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.

²⁶⁹ **SECTION 4. AMENDMENT.** Section 65-04-15 of the North Dakota Century Code is amended and reenacted as follows:

65-04-15. Information in employer's reports files confidential - Penalty if employee of bureau divulges information. The information contained in an employer's ~~report file~~ file is for the exclusive use and information of the bureau or its agents in the discharge of ~~its~~ their official duties and is not open to the public nor usable in any court in any action or proceeding ~~pending therein~~ unless the bureau is a party thereto. ~~The information contained in an employer's report may be provided to a federal or state law enforcement agency pursuant to a lawful order of a court upon a showing of necessity and prior notice to the bureau of an application for the order.~~ The information contained in the ~~report file~~, however, may be tabulated and published by the bureau in statistical form for the use and information of the state departments and of the public. Upon request, the bureau shall disclose the rate classification of an employer to the requester; however, the bureau may not disclose any information that would reveal the amount of payroll upon which that employer's premium is being paid or the amount of premium the employer is paying. The bureau may disclose whether an employer's file is active, cancelled, closed, pending, or delinquent. The information in the employer's file may not be released in aggregate form, except to those persons contracting with the bureau for exchange of information pertaining to the administration of this title or except upon written authorization by the employer for a specified purpose. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any office or employment with the bureau.

The bureau may, upon request of the state tax commissioner or the secretary of state, furnish to them a list or lists of employers showing only the names, addresses, and bureau file identification numbers of such employers as those files relate to this chapter; provided, that any such list so furnished must be used by the tax commissioner or the secretary of state only for the purpose of administering their duties. ~~The bureau may provide the commissioner of labor or job service North Dakota with 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 ~~the commissioner of labor or job service North Dakota~~ that state or federal agency. Whenever the bureau obtains information on activities of a contractor doing business in this state of which officials of the secretary of state, job service North Dakota, or tax commissioner may be unaware and that may be relevant to the duties of those officials, the bureau shall provide any relevant information to those officials for the purpose of administering their duties. The bureau may provide any state agency or a private entity with a list of names and addresses of employers for the purpose of jointly publishing or distributing publications or other information pursuant to section 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 5. AMENDMENT. Subsection 1 of section 65-04-26.1 of the North Dakota Century Code is amended and reenacted as follows:

²⁶⁹ Section 65-04-15 was also amended by section 2 of House Bill No. 1334, chapter 508.

1. An officer or director of a corporation, or manager or governor of a limited liability company, or partner of a limited liability partnership, or employee of a corporation or limited liability company having twenty percent stock ownership who has control of or supervision over the filing of and responsibility for filing premium reports or making payment of premiums or reimbursements under this title and who fails to file the reports or to make payments as required, is personally liable for premiums under this chapter and reimbursement under section 65-05-07.2, including interest, penalties, and costs if the corporation or limited liability company does not pay to the bureau those amounts for which the corporation or limited liability company is liable.

SECTION 6. AMENDMENT. Subsections 1 and 2 of section 65-04-32 of the North Dakota Century Code are amended and reenacted as follows:

1. The bureau may issue a notice of decision based on an informal internal review of the record and shall serve notice of the decision on the parties by regular mail. The bureau shall include with the decision a notice of the employer's right to reconsideration.
2. An employer has thirty days from the date of service to file a written petition for reconsideration. The request must state specifically the alleged errors in the decision and the relief sought. The request may be accompanied by additional evidence not previously submitted to the bureau. The bureau shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the ~~administrative order~~ notice of decision is final and may not be reheard or appealed.

²⁷⁰ **SECTION 7. AMENDMENT.** Subsection 3 of section 65-04-33 of the North Dakota Century Code is amended and reenacted as follows:

3. An employer who is uninsured is liable for any premiums plus penalties and interest due on those premiums, plus a penalty of twenty-five percent of all premiums due during the most recent year of noncompliance. An additional five percent penalty is due for each year of noncompliance before the most recent year; ~~not to exceed six years or fifty percent~~, beginning on the date the bureau became aware of the employer's uninsured status, resulting in the penalty for the second most recent year being thirty percent, for the third most recent year being thirty-five percent, for the fourth most recent year being forty percent, for the fifth most recent year being forty-five percent, and for the sixth most recent year being fifty percent. The bureau may not assess a penalty for more than six years of past noncompliance. The bureau may assess additional penalties, from the date the bureau became aware of the employer's uninsured status continuing until the effective date of coverage, equal to twenty-five percent of the premium due for that period. The penalties for employers are in addition to any other penalties provided by law. The bureau may reduce these penalties. However, the amount due from an employer may not be less than the

²⁷⁰ Section 65-04-33 was also amended by section 3 of House Bill No. 1334, chapter 508, and section 1 of Senate Bill No. 2309, chapter 566.

actual cost and reserves of any claim attributable to the employer during the time the employer was uninsured. An employer may not appeal a bureau decision not to reduce a penalty under this subsection.

SECTION 8. AMENDMENT. Section 65-05-07.2 of the North Dakota Century Code is amended and reenacted as follows:

65-05-07.2. Payment to bureau for certain claims. The employer shall reimburse the bureau for all medical expenses related to a compensable injury to an employee if the expenses are not more than two hundred fifty dollars and shall reimburse the bureau for the first two hundred fifty dollars of medical expenses when the expenses are more than two hundred fifty dollars. If an employee's compensable injury is determined through a civil action to have been sustained through the fault or negligence of a third person, or if a settlement has been entered between the employee and a third person through which the third person agrees to compensate the employee for the injury, the bureau, upon receipt of its subrogation interest, shall credit the account of the employer to the extent of the payment made by the employer to the bureau under this section. Upon the bureau's determination that the claim is compensable, the bureau shall pay the medical expenses associated with the claim and notify the employer of payments to be made by the employer under this section. If the employer does not pay the bureau within ~~ninety~~ thirty days of notice by the bureau, the bureau may impose a penalty on that employer. The penalty may not exceed one hundred twenty-five percent of the payment owed by the employer. The bureau shall collect the penalty in a civil action against the employer and deposit the money in the fund. An employer may not directly or indirectly charge an injured employee for any payment the employer makes on a claim. When the cost of an injured employee's medical treatment exceeds two hundred fifty dollars, the bureau shall pay all further medical expenses pursuant to this title. This section is effective for all compensable injuries that occur after July 31, 1995. Compensable injuries paid under sections 65-06.2-04 through 65-06.2-08 are not subject to this section.

SECTION 9. 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 employer subject to this title who maintains ~~an approved~~ a risk management program pursuant to section 65-04-19.1 approved by the bureau 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 10. AMENDMENT. Section 65-06-01 of the North Dakota Century Code is amended and reenacted as follows:

65-06-01. Volunteer ~~fireman firefighter, emergency or disaster volunteer disaster emergency trainees, community emergency response team member, in training defined.~~ The term "volunteer ~~fireman firefighter~~" means any active member of an organized volunteer fire department of this state and any other ~~person individual~~ performing services as a volunteer ~~fireman firefighter~~ for a municipality at the request of the chief or other ~~person individual~~ in command of the fire department of ~~such that~~ municipality or of any other officer of ~~such that~~ municipality having authority to demand ~~such service as a firefighter. Firemen Firefighters~~ who are paid a regular wage or stipend by the municipality ~~as such~~ for serving as a firefighter, or whose entire time is devoted to ~~such services~~ service as a firefighter for the

municipality, for the purpose of this chapter, ~~shall~~ are not be deemed volunteer firemen firefighters.

The term "emergency or disaster volunteer disaster emergency trainee" means any ~~person~~ individual serving without remuneration who is actively engaged in training to qualify as a disaster emergency worker ~~in the event of an~~ or is responding to a hazard, emergency disaster, or enemy attack on this country, and who is registered with the disaster emergency organization of a municipality, which has been officially recognized by the director of the state division of emergency management.

The term "in training" ~~shall be limited to and~~ means only those periods of time, ~~prior to an enemy attack on this country,~~ during which such an emergency or disaster volunteer disaster emergency trainee is receiving instruction, or is engaged in exercises or operations, in preparation for qualification as a disaster emergency worker in the event of ~~an~~ a hazard, emergency, disaster, or enemy attack on this country.

The term "community emergency response team member" means an individual registered as a community emergency response team member with the appropriate authority. For purposes of this chapter, a community emergency response team member is acting as a community emergency response team member only when the individual is receiving approved community emergency response team training or is acting as a member of a community emergency response team in an emergency or disaster.

Upon request of the bureau, the disaster emergency organization of a municipality shall provide the bureau with its roster of registered community emergency response team members.

The term "municipality" when used in reference to emergency or disaster volunteer disaster emergency trainees means the state or district thereof, cities, counties, municipalities, districts, or any other geographical entity of this state. This definition is not in any way intended to alter any interpretation or ruling in regard to the use of the term "municipality" when used in reference to volunteer ~~firemen~~ firefighters.

SECTION 11. AMENDMENT. Section 65-06-02 of the North Dakota Century Code is amended and reenacted as follows:

65-06-02. Volunteer firemen and firefighter, emergency or disaster volunteer disaster emergency trainees, and community emergency response team member declared employees - Covered by workers' compensation - Termination. Volunteer firemen firefighters, emergency or disaster volunteers, and volunteer disaster emergency trainees community emergency response team members are employees of the municipalities which they serve and are entitled to the same protection and rights under the provisions of this title as are full-time paid employees of such those municipalities; ~~except, however, that the protection and rights granted to volunteer disaster emergency trainees by this section shall terminate and cease in the event of an enemy attack on this country; except as to rights to benefits that shall have vested prior to the time of such attack.~~

SECTION 12. AMENDMENT. Section 65-06-03 of the North Dakota Century Code is amended and reenacted as follows:

65-06-03. Compensation benefits - How determined. The basis of compensation and benefits to be paid to a volunteer fireman firefighter, an emergency or disaster volunteer and disaster emergency trainees, or a community emergency response team member under the terms of this chapter shall be determined in accordance with the provisions of section 65-05-09; provided, however, that the weekly wage of the claimant shall be determined from a computation of income derived from the claimant's business or employment.

SECTION 13. AMENDMENT. Section 65-06-04 of the North Dakota Century Code is amended and reenacted as follows:

65-06-04. Assessment of premiums. For the purpose of making assessments of premiums to be charged against municipalities for protection of volunteer firemen and volunteer firefighters, emergency or disaster emergency trainees volunteers, community emergency response team members, the bureau shall make such survey as may seem advisable to ascertain the probable annual expenditures necessary to be paid out of the fund to carry out the provisions of this chapter, and shall fix the annual charges and assessments which shall be made against municipalities employing volunteer firemen and volunteer disaster emergency trainees firefighters, emergency or disaster volunteers, and community emergency response team members. Such charge shall be a fixed sum for each one hundred of the population of the municipality involved, the same to be uniform as to all such municipalities but in proportion to the population thereof. In determining the amount of premium charge, the bureau may apply the system of experience rating provided in this title, as applied to other risks. The bureau may also establish a minimum charge or assessment to be applicable to municipalities where the fixed rate or charge multiplied by the number of hundreds of the population thereof would amount to less than the amount of such minimum charge or assessment. The population of a municipality shall be that shown by the latest official North Dakota state or United States government census, whichever may be the later.

SECTION 14. REPEAL. Section 65-04-19.2 and chapter 65-14 of the North Dakota Century Code are repealed.

SECTION 15. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 12, 2003
Filed March 12, 2003

CHAPTER 565

HOUSE BILL NO. 1150

(Representative M. Klein)

(Senator J. Klein)

(At the request of the Workers Compensation Bureau)

WORKERS' COMPENSATION BOARD AND EVALUATIONS

AN ACT to amend and reenact sections 65-02-03.1, 65-02-30, and 65-03-04 of the North Dakota Century Code, relating to the term of office of members and membership of the workers compensation bureau board of directors and biennial performance evaluations of the functions and operations of the workers compensation bureau; and to provide for application.

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. Workers compensation board of directors - Appointment.

1. ~~Beginning September 4, 1997, the initial board of directors shall consist of the members on the state advisory council on December 15, 1996. The initial board shall submit to the governor a list of three names of potential candidates for each of the employer member positions and the medical association position. From each list the governor shall select an individual to fill the member position of the subsequent board. An organization that is statewide in scope and which through its affiliates embraces a cross section and a majority of organized labor in this state shall submit to the governor a list of three names of potential candidates for one of the three employee positions. The governor shall select an individual to fill this organized labor employee member position, and the governor shall appoint two individuals to fill the remaining two employee positions. The subsequent board is effective January 1, 1998.~~
2. ~~After December 31, 1997~~ the effective date of this Act, the board consists of ~~ten~~ eleven members. The appointment and replacement of the members must ensure that:
 - a. Six board members represent employers in this state that maintain active accounts with the bureau, at least one of which must be a participant in the risk management program, at least two of which must be employers with annual premiums greater than twenty-five thousand dollars, at least one of which must be an employer with an annual premium of ten thousand dollars but less than twenty-five thousand dollars, and at least one of which must be an employer with an annual premium of less than ten thousand dollars.

- b. Three members represent employees; at least one member must have received workers' compensation benefits; and at least one member must represent organized labor.
 - c. One ~~nonvoting~~ 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.
3. 2. Board members shall serve ~~six-year~~ four-year terms, except of the initial board members, an employee representative and two employer representatives shall serve only through December 31, 1998; an employee representative and two employer representatives shall serve only through December 31, 2000; and an employee representative, two employer representatives, and the medical association representative shall serve only through December 31, 2002, as determined by lot to initiate a cycle that results in three members' terms expiring on December thirty-first of each even-numbered year, and beginning the initial term of office of the member at large to be appointed upon the effective date of this Act 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 may not serve more than ~~two~~ three consecutive terms. 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 employer representative or medical association representative from a list of three candidates submitted by the board. 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 affiliates embraces a cross section and a majority of organized labor in this state, ~~and the~~ The governor shall select the replacement member for a departing nonorganized labor employee representative. The governor shall appoint the replacement member for the member at large from a list of three candidates submitted by the board. 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 2. AMENDMENT. Section 65-02-30 of the North Dakota Century Code is amended and reenacted as follows:

65-02-30. Independent performance evaluation - Bureau development of performance measurements - Continuing appropriation. Biennially, the director shall request the state auditor to select a firm with extensive expertise in workers' compensation practices and standards to complete a performance evaluation of the functions and operations of the bureau during that biennium. This may not be construed to require the firm to be a certified public accounting firm. ~~The~~ As determined necessary by the state auditor, but at least once every other biennium, the biennial independent performance evaluation must evaluate the departments of the bureau to determine whether the bureau is providing quality service in an

efficient and cost-effective manner. ~~The firm also shall conduct a performance evaluation of;~~ evaluate the effectiveness of safety and loss prevention programs under section 65-03-04; and evaluate the board to determine whether the board is operating within section 65-02-03.3 and within the board's bylaws. The firm's report must contain recommendations for departmental improvement or an explanation of why no recommendations are being made. The director, the chairman of the board, and a representative of the firm shall present the evaluation report and any action taken to the legislative council's legislative audit and fiscal review committee and to the house and senate industry, business and labor standing committees during the next regular session of the legislative session following the performance evaluation. The director shall provide a copy of the performance evaluation report to the state auditor. The bureau shall develop and maintain comprehensive, objective performance measurements. These measurements must be evaluated as part of the independent performance evaluation performed under this section. Money in the workers' compensation fund is appropriated on a continuing basis for the payment of the expense of conducting the performance evaluation.

SECTION 3. AMENDMENT. Section 65-03-04 of the North Dakota Century Code is amended and reenacted as follows:

65-03-04. Safety programs. The bureau shall create and operate work safety and loss prevention programs to protect the health of covered employees and the financial integrity of the fund, including programs promoting safety practices by employers and employees through education, training, consultation, grants, or incentives. ~~The biennial independent performance evaluation of the bureau must evaluate and report on the effectiveness of these programs.~~

SECTION 4. APPLICATION OF ACT. The reduction in the term of office from six years to four years in section 2 of this Act does not affect the term of office of a member appointed before the effective date of this Act, except as provided in section 2 of this Act.

Approved March 12, 2003

Filed March 12, 2003

CHAPTER 566

SENATE BILL NO. 2309

(Senators O'Connell, Andrist, J. Lee)
(Representatives Eckre, N. Johnson, Severson)

TOWNSHIP REPORT PENALTY EXEMPTION

AN ACT to amend and reenact subsection 4 of section 65-04-33 of the North Dakota Century Code, relating to exempting townships from penalties for failing to furnish workers' compensation payroll reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁷¹ **SECTION 1. AMENDMENT.** Subsection 4 of section 65-04-33 of the North Dakota Century Code is amended and reenacted as follows:

4. An employer who fails or refuses to furnish to the bureau the annual payroll report and estimate or who fails or refuses to furnish other information required by the bureau under this chapter is subject to a penalty established by the bureau of two thousand dollars. Upon the request of the bureau, the employer shall furnish the bureau any of that employer's payroll records, annual payroll reports, and other information required by the bureau under this chapter and an estimate of payroll for the advance premium year. If the employer fails or refuses to provide the records within thirty days of a written request from the bureau, the employer is subject to a penalty not to exceed one hundred dollars for each day until the bureau receives the records, in addition to the two thousand dollar penalty set forth above. The bureau may not assess a penalty that exceeds one hundred fifty dollars under this subsection against an organized township. The bureau may reduce penalties for employers under this subsection. However, an employer may not appeal a bureau decision not to reduce a penalty. The bureau shall notify an employer by regular mail of the amount of premium and penalty due the bureau from the employer. If the employer fails to pay that amount within thirty days, the bureau may collect the premium, penalties, and interest due by civil action. In that action, the court may not review or consider the action of the bureau regarding the acceptance or payment of a claim filed when the employer was uninsured. No exemptions except absolute exemptions under section 28-22-02 are allowed against any levy under executions pursuant to a judgment recovered in the action.

Approved March 12, 2003
Filed March 12, 2003

²⁷¹ Section 65-04-33 was also amended by section 7 of House Bill No. 1149, chapter 564, and section 3 of House Bill No. 1334, chapter 508.

VETOED MEASURES

CHAPTER 567

HOUSE BILL NO. 1016

(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 create and enact a new section to chapter 12-44.1 of the North Dakota Century Code, relating to the incarceration of female inmates in grade one correctional facilities; to provide a statement of legislative intent; to provide for a legislative council study; to provide an exemption to chapters 48-01.1 and 54-44.7 of the North Dakota Century Code, relating to public improvement contract bids and architect, engineer, and lands surveying services; to provide for a performance audit of the department of corrections and rehabilitation; to provide an expiration date; and to declare an emergency.

VETO

April 28, 2003

The Honorable Janet Wentz
House Chambers
Speaker of the House
State Capitol
Bismarck, ND 58505

RE: HOUSE BILL 1016, Department of Corrections and Rehabilitation Funding Bill

Dear Speaker Wentz,

North Dakota has real challenges with crime, such as the growing methamphetamine scourge and other drug related crimes. We must have adequate resources to house and treat this growing inmate population.

The Legislature has chosen to place inmates at a converted school in New England, and at county jails throughout the state. While this plan may create some liability issues, we will try to make it work. The immediate problem is that it does not adequately fund the Corrections Department.

The funds allocated for contracting with the counties do not take into account our projected inmate population. Furthermore, \$3 million was taken out of the prison budget, which will result in unacceptable reduction in corrections officers and rehabilitation services. The result of reduced treatment will be a larger prison population and more repeat offenders.

This is a basic public safety and fiscal management issue. I therefore veto the bill.

Sincerely,

John Hoeven
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 the department of corrections and rehabilitation, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Field services	\$20,922,058
Prisons division	68,254,582
Juvenile community services	9,629,163
Youth correctional center	<u>11,577,679</u>
Total all funds	\$110,383,482
Less estimated income	<u>29,646,871</u>
Total general fund appropriation	\$80,736,611

SECTION 2. APPROPRIATION - 2001-03 BIENNIUM. There is appropriated from federal funds the sum of \$500,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation, in adult services of the field services division, for the purpose of defraying the expenses of the department's transition center, for the biennium beginning July 1, 2001, and ending June 30, 2003.

SECTION 3. CRIME VICTIMS RESTITUTION AND GIFT FUND. The sum of \$100,000, or so much of the sum as may be necessary, included in the field services line item in section 1 of this Act, is from the crime victims restitution and gift fund and shall be used by the department of corrections and rehabilitation for the purposes provided in section 54-23.4-05, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 4. STATE PENITENTIARY LAND FUND. The sum of \$82,500, or so much of the sum as may be necessary, included in the youth correctional center line item in section 1 of this Act, is from the state penitentiary land fund and shall be used by the department of corrections and rehabilitation for capital projects at the youth correctional center, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 5. LEGISLATIVE INTENT - COUNTY CONTRACT HOUSING STATE FEMALE INMATES - REPORTS TO BUDGET SECTION. It is the intent of the legislative assembly that the state contract with county facilities to house state female inmates during the 2003-05 biennium, with the continuation of the contracting subject to the results of the study in Section 6 of this Act. The department of corrections and rehabilitation and county jails contracting to house state female inmates shall report to the fall 2003 and summer 2004 meetings of the budget section on the implementation and procedures of contracting with counties to house state female inmates.

SECTION 6. LEGISLATIVE COUNCIL STUDY - CONTRACT HOUSING - FEMALE INMATES. The legislative council shall consider studying, during the 2003-04 interim, the long-term needs of all state inmates and if the department of corrections and rehabilitation should continue to contract to house state female inmates with county jails or if the state should expand the prison system. If selected, the study must include a review of the east cell block of the North Dakota state penitentiary and future needs for maximum security prisoners; the female population and related treatment, programming, and training needs; and the mental health services of the state hospital, including if the department of corrections and rehabilitation should continue to expand its facilities on the state hospital grounds and if patients at the state hospital with mental health needs should be served in other locations. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 7. TRANSFER OF LAND AND BUILDINGS - EXEMPTION FROM CHAPTERS 48-01.1 AND 54-44.7. Ownership of the food service building, the dining facility and attached building 18A, the laundry building, and buildings eight and fifty on the grounds of the state hospital must be transferred to the department of corrections and rehabilitation. The department of corrections and rehabilitation is not subject to the provisions of chapters 48-01.1 and 54-44.7 relating to public improvement contract bids and architect, engineer, and land surveying services for construction and renovation relating to the nurses' building, food service building, the dining facility and attached building 18A, laundry building, and building eight.

SECTION 8. DEPARTMENT OF CORRECTIONS AND REHABILITATION - PERFORMANCE AUDIT. The state auditor shall consider conducting a performance audit of the department of corrections and rehabilitation during the period beginning July 1, 2003, and ending January 1, 2005. The results of the performance audit must be presented to the legislative audit and fiscal review committee and the appropriations committees during the department of corrections and rehabilitation's budget presentation during the fifty-ninth legislative assembly.

SECTION 9. A new section to chapter 12-44.1 of the North Dakota Century Code is created and enacted as follows:

Female inmates in grade one correctional facilities. Notwithstanding section 12-44.1-06, a grade one correctional facility that has a contract with the department of corrections and rehabilitation to confine female inmates who have been sentenced to the legal and physical custody of the department of corrections and rehabilitation may confine the female inmate for more than one year in accordance with the terms of the contract. A female inmate who has been sentenced to the legal and physical custody of the department of corrections and rehabilitation and who is confined in a grade one correctional facility under a contract with the department of corrections and rehabilitation has the same rights to sentence reduction for good and meritorious conduct and to pardon and parole as an inmate confined in a department of corrections and rehabilitation prisons division facility.

SECTION 10. EXPIRATION DATE. Section 9 of this Act is effective from July 1, 2003, through June 30, 2005, and after that date is ineffective.

SECTION 11. EMERGENCY. The sum of \$1,421,727 for capital construction projects included in the prisons division line item in section 1 of this Act and section 2 of this Act are declared to be an emergency measure.

Disapproved April 28, 2003

Filed April 28, 2003

CHAPTER 568**HOUSE BILL NO. 1022**

(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, the judicial branch, and the legislative council; to authorize the industrial commission to issue and sell evidences of indebtedness for ConnectND; to provide for centralization of information technology equipment, software, and supplies purchasing; to provide for a technology critical needs pool; to provide for a legislative council study; to create and enact a new section to chapter 54-10, a new section to chapter 54-35, a new subsection to section 54-44.4-02, a new section to chapter 54-59, and two new subsections to section 54-59-05 of the North Dakota Century Code, relating to information technology responsibilities of the state auditor, information technology committee responsibilities, purchasing services, and information technology department powers and duties; to amend and reenact sections 54-59-02, 54-59-05, and 54-59-09 of the North Dakota Century Code, relating to responsibilities of the information technology department and information technology standards; and to repeal section 54-59-13 of the North Dakota Century Code, relating to information technology reviews.

VETO

April 28, 2003

The Honorable Janet Wentz
House Chambers
Speaker of the House
State Capitol
Bismarck, ND 58505

RE: HOUSE BILL 1022, Information Technology Department (ITD) Funding Bill

Dear Speaker Wentz,

North Dakota has developed one of the finest statewide high-speed data networks in the country. It is a cost effective public sector, private sector partnership that supports education and government, and creates opportunity for business.

At the heart of the system is ITD, the state's information technology department. This funding legislation for ITD creates a bureaucratic maze that will cost taxpayers more and will certainly slow down technology-based services throughout state government. It transfers funds back and forth between ITD and almost every other agency in state government, which will not work and which will leave ITD underfunded.

I can support the 5 percent reduction in each agency's technology budget, but this legislation for ITD will increase costs, and impede services to the people of North Dakota. I therefore veto it.

Sincerely,

John Hoeven
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. 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 information technology department for the purpose of defraying the expenses of the information technology department, for the biennium beginning July 1, 2003, and ending June 30, 2005, as follows:

Salaries and wages	\$25,715,694
Operating expenses	33,120,860
Capital assets	5,323,000
Division of independent study	5,625,480
Educational technology council	793,818
EduTech	2,540,348
Wide area network	7,436,223
Enterprise resource planning system (ConnectND)	20,000,000
Geographic information system	678,343
Prairie public broadcasting	1,337,138
Criminal justice information sharing	4,741,200
Total all funds	\$107,312,104
Less estimated income	99,117,301
Total general fund appropriation	\$8,194,803

SECTION 2. ESTIMATED INCOME - SPECIAL FUNDS TRANSFERS. The estimated income line item in section 1 of this Act includes \$862,059 from the special funds of various state agencies resulting from information technology reductions, for the biennium beginning July 1, 2003, and ending June 30, 2005. Notwithstanding any other provisions of law, the office of management and budget shall transfer to the information technology department the following amounts available from the special funds of the agencies listed, for the biennium beginning July 1, 2003, and ending June 30, 2005.

AGENCY	AMOUNT
State department of health	\$11,108
Aeronautics commission	6,942
Veterans' home	6,046
Department of financial institutions	7,881
Highway patrol	9,450
Department of transportation	350,000
Industrial commission	4,034
Bank of North Dakota	300,000
Housing finance agency	24,080
Mill and elevator association	23,230
Department of corrections and rehabilitation	24,567
Office of administrative hearings	4,311
Secretary of state	19,550

Attorney general	12,929
State auditor's office	1,465
Department of agriculture	1,329
Insurance commissioner	37,368
Vision services - school for the blind	2,725
Seed department	10,050
Parks and recreation department	4,994
Total	\$862,059

SECTION 3. APPROPRIATION AUTHORITY - REDUCTIONS. The office of management and budget shall reduce the special funds appropriation authority for the aeronautics commission, the department of financial institutions, the insurance commissioner, and the seed department, for the biennium beginning July 1, 2003, and ending June 30, 2005, by the amounts listed in section 2 of this Act relating to information technology reductions. The amounts will be available in the special funds for transfer as provided in section 2 of this Act.

SECTION 4. BOND ISSUANCE AUTHORIZATION - PURPOSES - APPROPRIATION. The industrial commission, acting as the North Dakota building authority, shall arrange through the issuance of evidences of indebtedness under chapter 54-17.2 from the effective date of this Act and ending June 30, 2005, for the funding in an amount not to exceed \$20,000,000 to be loaned to the information technology department for the purchase or lease of computer hardware and software and for the costs of the implementation services for the enterprise resource planning system commonly known as the ConnectND project. ConnectND is declared to be in the public interest and is for the purpose of this Act, a project as that term is defined in chapter 54-17.2. The amount of the evidences of indebtedness may be reduced by any moneys made available from the higher education institutions. The proceeds of the evidences of indebtedness and other available funds, as appropriated in section 1 of this Act, may be used for ConnectND project costs, debt service repayment, and refunding of ConnectND interim borrowings. The industrial commission shall issue evidences of indebtedness under this section with the condition that repayment on the evidences of indebtedness need not begin until July 1, 2005. For purposes of this Act, loan or debt service repayments are equivalent to lease rental payments as that term is used in chapter 54-17.2. ConnectND student fee revenues and other available funds are appropriated to the North Dakota university system for the North Dakota university system's share of the ConnectND project costs, debt service repayment, refunding of ConnectND interim borrowings, and other costs incidental to ConnectND implementation.

The authority of the industrial commission to issue evidences of indebtedness under this section ends June 30, 2005, 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 limitation provided in section 54-17.2-23 does not apply to repayments allocable to the evidences of indebtedness issued for the ConnectND project.

SECTION 5. EVIDENCES OF INDEBTEDNESS ISSUANCE REPAYMENT RESPONSIBILITY. Debt service on the evidences of indebtedness issued under section 2 of this Act must be available from charges made and collected by the information technology department from users of the system with twenty-nine percent of the debt service being the responsibility of state agencies and seventy-one percent of the debt service being the responsibility of higher education.

SECTION 6. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$45,999, or so much of the sum as may be necessary, to the judicial branch for the purpose of defraying costs associated with information technology, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 7. INFORMATION TECHNOLOGY EQUIPMENT, SOFTWARE, AND SUPPLIES PURCHASING CENTRALIZATION - REPORTS TO THE INFORMATION TECHNOLOGY COMMITTEE. No executive branch state agency, department, or institution, excluding institutions under control of the state board of higher education, may purchase any information technology equipment, software, or supply item with a cost greater than five hundred dollars without using the centralized purchasing services of the information technology department during the biennium beginning July 1, 2003, and ending June 30, 2005. The information technology department shall charge a ten percent purchasing fee on all purchases made under the centralized purchasing services program. The fee may only be paid with funds from the general fund or special funds derived from sources other than pension or federal funds. The first \$1,000,000 of the fee collections must be deposited in the information technology operating account, and the remaining fee collection must be deposited in an information technology critical needs pool established by the department for addressing critical information technology needs. The chief information officer may waive the purchasing fee to address unique situations. The information technology department shall provide periodic reports to the information technology committee regarding the bidding of information technology equipment, software, and supplies.

SECTION 8. TECHNOLOGY CRITICAL NEEDS POOL - APPROPRIATION - BUDGET SECTION APPROVAL. The funding in the information technology critical needs pool established in section 7 of this Act is appropriated to the information technology department for the biennium beginning July 1, 2003, and ending June 30, 2005, for addressing executive branch state agencies, departments, and institutions, excluding institutions under the control of the state board of higher education, critical information technology needs. Executive branch state agencies, departments, and institutions, excluding institutions under control of the state board of higher education, requesting critical needs funding shall submit a written request detailing the purpose and need for the funding to the chief information officer of the information technology department. Requests approved by the information technology department must be forwarded to the office of management and budget which shall transfer funding from the critical needs pool to agencies, departments, and institutions upon approval of the request by the budget section, which is hereby appropriated.

SECTION 9. TRANSFER OF APPROPRIATION AUTHORITY BETWEEN LINE ITEMS. 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 for state agencies, departments, and institutions as may be requested to accommodate information technology funding reductions made by the fifty-eighth legislative assembly. The office of management and budget shall report to the budget section regularly on transfers made pursuant to this section.

SECTION 10. INFORMATION TECHNOLOGY LEGISLATIVE COUNCIL STUDY - APPROPRIATION - REPORTS TO THE BUDGET SECTION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$350,000, or so much of the sum as may be necessary, to the legislative council for the biennium beginning July 1, 2003, and ending June 30, 2005, for the purpose of contracting with consultants to conduct an

information technology organizational study and an information technology management study and to provide assistance with the preparation of the request for proposals and consultant oversight. The studies must be completed by October 1, 2003, and periodic progress reports on the status of the studies must be provided to the information technology committee. The information technology committee may extend the October 1, 2003, deadline as it deems appropriate. A final report must be presented to the budget section upon completion of the studies.

The information technology organizational study must include a review and identification of:

1. The cost and benefits of a centralized information technology structure and the cost and benefits of a decentralized information technology structure.
2. The cost of providing electronic mail administration, file and print server administration, seat management and desktop personal computer support, mainframe and distributed computing hosting services, consolidated storage management and disaster recovery, and software development.
3. The roles and responsibilities of agency personnel providing information technology services under a centralized information technology structure and a decentralized information technology structure.
4. The positions and competencies needed by the information technology department to provide the information technology services on a centralized basis, including the organizational changes required within the department to provide the centralized services.
5. The human resource management issues, including change management, training, and employee compensation, to be addressed for a successful centralization.
6. The adequacy and quality of the services as currently provided and proper performance measures.
7. The comparison of current costs to industry data and data from other states.
8. Information technology services appropriate to be performed by individual agencies.
9. A plan to either centralize or decentralize the services identified, including the reorganization tasks, personnel transfers, and the changes required for information technology budgeting and cost allocation processes.

The information technology management study must include a review of:

1. The technology management processes of other states and private industry with respect to prioritizing state agency information technology budget requests, establishing information technology standards and policies, and overseeing information technology expenditures.

2. The role of other states in providing information technology services to nonstate government entities.
3. The level of information technology outsourcing in other state governments and the private sector and the applicability to the state of North Dakota.
4. The trends that will impact technology deployment and spending in the next five to ten years.
5. The level of coordination in the management of enterprise initiatives, such as the state wide area network, the enterprise resource planning system initiative, the geographic information systems initiative, and the criminal justice information sharing initiative, compared to other states, including a recommendation regarding the appropriate governance structure to provide the maximum benefits to the state.
6. The potential changes to the organizational structure of the information technology department and other state government entities as related to information technology.

SECTION 11. A new section to chapter 54-10 of the North Dakota Century Code is created and enacted as follows:

Information technology responsibilities. The state auditor shall:

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 information technology department's enterprise architecture committee.

SECTION 12. A new section to chapter 54-35 of the North Dakota Century Code is created and enacted as follows:

Information technology committee - Information technology reviews.

The information technology committee may request the state auditor to conduct an information technology compliance review. The review may consist of an audit of an agency's information technology management, information technology planning,

compliance with information technology plans, and compliance with information technology standards and policies or an audit of statewide compliance with specific information technology standards and policies.

SECTION 13. A new subsection to section 54-44.4-02 of the North Dakota Century Code is created and enacted as follows:

Information technology equipment, software, and supply items with a cost greater than five hundred dollars as provided in section 54-59-05.

SECTION 14. A new section to chapter 54-59 of the North Dakota Century Code is created and enacted as follows:

Department shall establish certain standards for agencies - Advisory committee - Exceptions. 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 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. The chief information officer shall submit recommendations of the advisory committee regarding major software projects to the information technology committee for consideration by the committee and the drafting of appropriate legislation to implement the recommendations. The judicial and legislative branches shall annually notify the advisory committee on their major computer software 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. Before an executive branch state agency, department, or institution, excluding institutions under control of the state board of higher education, may purchase or contract for computer software or computer systems associated with electronic mail, file and print services hosting and support, desktop personal computers and desktop support services, mainframe and distributed computing hosting services, or services for disaster recovery of critical systems, the department shall review the proposed purchase and approve of the purchase.

SECTION 15. AMENDMENT. Section 54-59-02 of the North Dakota Century Code is amended and reenacted as follows:

54-59-02. Information technology department - Responsibility - Public policy. The information technology department is established with the responsibility for all wide area network services planning, selection, and implementation for all state agencies, including institutions under the control of the board of higher education, counties, cities, and school districts in this state. With respect to a county, city, or school district, wide area network services are those services necessary to transmit voice, data, or video outside the county, city, or school district. In exercising its powers and duties, the department is responsible for computer support services, host software development, statewide communications services, standards for providing information to other state agencies and the public through the internet, technology planning, process redesign, and quality assurance. The department may not exercise its powers and duties in a manner that competes or otherwise interferes with the provision of telecommunications services to private, charitable, or nonprofit entities by privately or cooperatively owned telecommunications companies.

SECTION 16. Two new subsections to section 54-59-05 of the North Dakota Century Code are created and enacted as follows:

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.

Shall purchase information technology equipment, software, and supply items with a cost greater than five hundred dollars on behalf of other state agencies, departments, and institutions, excluding institutions under control of the state board of higher education, and may charge a purchasing fee of ten percent for such purchases.

SECTION 17. 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 or software 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 three 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 before executing a financing agreement. If the budget section 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 the

amount appropriated to the department during that biennium for equipment.

5. Each executive branch agency or institution, ~~except~~ 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.
- ~~5.~~ 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.
- ~~6.~~ 7. ~~May~~ Shall request information on or review information technology, applications, system development projects, and application development projects of executive branch agencies.
- ~~7.~~ 8. Shall study emerging technology and evaluate its impact on the state's system of information technology.
- ~~8.~~ 9. 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.
- ~~9.~~ 10. Shall review the information technology management of executive branch agencies or institutions; ~~including institutions under the control of the board of higher education as provided in section 54-59-13.~~
- ~~10.~~ 11. Shall perform all other duties necessary to carry out this chapter.

SECTION 18. 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 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 approved by the state information technology advisory committee. Unless an exemption is granted by the ~~department~~ department 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. Unless an exemption is granted by the ~~department~~ department 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.

SECTION 19. REPEAL. Section 54-59-13 of the North Dakota Century Code is repealed.

Disapproved April 28, 2003

Filed April 28, 2003

CHAPTER 569**SENATE BILL NO. 2154**

(Education Committee)

(At the request of the Office of Management and Budget)

**TEACHER COMPENSATION AND PER STUDENT
PAYMENTS**

AN ACT to create and enact four new sections to chapter 15.1-07, a new section to chapter 15.1-12, and a new section to chapter 15.1-27 of the North Dakota Century Code, relating to school district plans, reorganizations, ending balances, and joint powers agreements; to amend and reenact subsection 5 of section 15.1-09-36, section 15.1-21-02, subsection 6 of section 15.1-27-01, sections 15.1-27-04, 15.1-27-05, 15.1-27-06, and 15.1-27-07, subsection 1 of section 15.1-27-10, section 15.1-27-11, subsection 4 of section 15.1-27-19, subsection 4 of section 15.1-27-21, sections 15.1-27-34, 15.1-27-37, 15.1-27-39, and 15.1-29-01, subsection 4 of section 15.1-29-06, sections 15.1-29-13 and 15.1-29-14, subsection 1 of section 15.1-30-01, section 15.1-30-05, subsection 2 of section 15.1-30-15, and sections 15.1-31-05, 15.1-31-06, and 15.1-32-16 of the North Dakota Century Code, relating to per student payments, weighting factors, transportation aid, teacher compensation, teacher compensation reimbursement, and high school units; to repeal sections 15.1-27-26, 15.1-27-27, 15.1-27-28, 15.1-27-29, 15.1-27-30, and 15.1-27-31 of the North Dakota Century Code, relating to state transportation aid payments; to provide for the distribution of transportation grants; to provide for a legislative council study; to provide for data envelopment analysis completion; to provide for No Child Left Behind Act of 2001 cost estimates; to provide for teacher compensation efforts; to provide for contingent payments; to provide an appropriation; and to provide an effective date.

VETO

April 28, 2003

The Honorable Jack Dalrymple
Senate Chambers
President of the Senate
State Capitol
Bismarck, ND 58505

RE: SENATE BILL 2154, the K-12 Education Funding Bill

Dear President Dalrymple,

Senate Bill 2154 does not commit any increase in education funding to teacher compensation in order to continue the progress that we initiated in the last legislative session. I offered increasing teacher compensation payments or earmarking state aid for education for compensation increases. There may be other ways to do it, but we must continue forward.

We have made progress over the past two years in our effort to lift North Dakota from 50th in the nation in teacher salaries. We cannot simply go back to the old way of doing things.

I therefore veto this bill.

Sincerely,

John Hoeven
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

School district demographics - Long-term planning process.

1. Between January first and June thirtieth of every even-numbered year, the board of each school district shall invite the public to participate in a planning process addressing the effects that demographics might have on the district in the ensuing three-year and five-year periods, and specifically addressing potential effects on:
 - a. Academic and extracurricular programs;
 - b. Instructional and administrative staffing;
 - c. Facility needs and utilization; and
 - d. District tax levies.
2. At the conclusion of the planning process, the board shall prepare a report, publish a notice in the official newspaper of the district indicating that the report is available, and make the report available upon request.

SECTION 2. A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

High school district - Change to elementary district - Prohibited.

1. Beginning July 2, 2003, a high school district may not become an elementary district.
2. Subsection 1 does not apply to school districts participating in cooperative agreements approved by the superintendent of public instruction.

SECTION 3. A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

Joint powers agreement - Approval by superintendent of public instruction - Criteria. If school districts participating in joint powers agreements under chapter 54-40.3 wish to receive reimbursement for expenses, as provided in section 19 of this Act, the school districts must request that the superintendent of public instruction approve their joint powers agreement. In order for the

superintendent of public instruction to approve a joint powers agreement, the superintendent shall determine and annually verify that:

1.
 - a. The participating school districts are contiguous; and
 - b.
 - (1) The total land mass of the participating school districts exceeds four thousand square miles [1035995 hectares];
 - (2) The total land mass of the participating school districts exceeds two thousand five hundred square miles [647497 hectares] and the participating school districts number at least six; or
 - (3) The total land mass of the participating school districts exceeds two thousand five hundred square miles [1035995 hectares] and the total number of students in average daily membership in the participating school districts exceeds two thousand five hundred.
2. The joint powers agreement provides that a school district contiguous to any school district already participating in the joint powers agreement may become a participant in the agreement at any time.
3. The joint powers agreement requires that the participating school districts agree to maintain a joint operating fund, agree to share administrative functions, or agree to implement various common requirements; provided that:
 - a. If the participating school districts agree to establish a joint operating fund, the joint powers agreement must require that during the first school year following approval, the participating school districts shall establish a joint operating fund equal to at least two percent of the participating districts' total expenditures for the school year ending on the June thirtieth preceding the date of approval; during the second school year following approval, the participating school districts shall establish a joint operating fund equal to at least four percent of the participating districts' total expenditures for the school year ending on the June thirtieth preceding the date of approval; and during the fifth school year following approval, the participating school districts shall establish a joint operating fund equal to at least six percent of the participating districts' total expenditures for the school year ending on the June thirtieth preceding the date of approval;
 - b. If the participating school districts agree to share administrative functions, the joint powers agreement must require that during the first school year following approval, all of the participating districts shall share in the administration of at least three services; during the third school year following approval, all of the participating districts shall share in the administration of at least five services; and during the fifth school year following approval, all of the participating districts shall share in the administration of at least seven services; and that the list from which the participating districts must select the services to be shared consists of:
 - (1) Federal title program management;

- (2) Staff development;
 - (3) Special education delivery;
 - (4) Curriculum development or delivery;
 - (5) Career and technical education delivery;
 - (6) Student instructional support;
 - (7) Media and technology;
 - (8) Business management;
 - (9) Distance learning;
 - (10) Student counseling;
 - (11) Food and nutrition;
 - (12) Facility safety and health;
 - (13) School accreditation and improvement; and
 - (14) Transportation; and
- c. If the participating school districts agree to implement various common requirements, the joint powers agreement must require that during the first school year following approval, all of the participating districts shall implement at least three requirements; during the third school year following approval, all of the participating districts shall implement at least six requirements; and during the fifth school year following approval, all of the participating districts shall implement at least eight requirements; and that the list from which the participating districts must select the requirements to be implemented consists of:
- (1) A common school calendar;
 - (2) A common class schedule;
 - (3) A common intranet communication system;
 - (4) A common class registration process for grades seven through twelve;
 - (5) A common curriculum for each grade level from kindergarten through six;
 - (6) A common student data system;
 - (7) A common school improvement and staff development process;
 - (8) Common services, as set forth in a five-year plan;

- (9) A school facilities plan; and
 - (10) Joint funding of dual credit and advance placement courses.
4. The joint powers agreement provides for the employment and compensation of a chief administrator and other staff necessary to carry out the provisions of the agreement and the requirements of this section and section 15.1-27-37.

SECTION 4. A new section to chapter 15.1-07 of the North Dakota Century Code is created and enacted as follows:

Ending fund balance - Amount.

1. The board of a school district may carryover moneys to the ensuing fiscal year to meet the cash requirements of all funds or purposes to which the credit of the school district may be legally extended.
2. For taxable years beginning after December 31, 2003, and ending on December 31, 2007, the amount carried over by a school district may not exceed fifty percent of the current annual budget for all purposes other than debt retirement and amounts financed from bond sources plus twenty thousand dollars.
3. For taxable years beginning after December 31, 2007, the amount carried over by a school district may not exceed forty-five percent of the current annual budget for all purposes other than debt retirement and amounts financed from bond sources plus twenty thousand dollars.

SECTION 5. AMENDMENT. Subsection 5 of section 15.1-09-36 of the North Dakota Century Code is amended and reenacted as follows:

5. If a board charges fees not authorized by law and refuses to discontinue the charges when directed to do so by the superintendent of public instruction, the superintendent shall withhold the ~~per student and transportation~~ state aid payments to which the district is entitled for each student charged an unauthorized fee.

SECTION 6. A new section to chapter 15.1-12 of the North Dakota Century Code is created and enacted as follows:

State board of public school education - Approval of elementary districts prohibited. The state board of public school education may not approve any reorganization plan that would result in the creation of an elementary district.

SECTION 7. 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:
 4. a. Four units of English- language arts;
 2. b. ~~Three~~ Four units of mathematics;

3. c. Four units of science-₁
4. d. ~~Three~~ Four units of social studies, including one of world history and one of United States history, ~~both of which must emphasize geography-₁~~
5. e. ~~One~~ One-half unit of health ~~and~~ during each school year;
- f. One-half unit of physical education- during each school year;
6. g. ~~One unit of~~ Two units of fine arts, at least one of which must be music-₁
7. ~~Any six units selected from business education, economics and the free enterprise system, foreign language, American sign language, and vocational courses including family and consumer sciences, agriculture, business and office technology, marketing, diversified occupations, trade and industrial education, technology education, and health careers. The vocational courses may be offered through cooperative arrangements approved by the state board for vocational and technical education.~~
- h. Two units of the same foreign language; and
- i. Two units of vocational 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:
- 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.

SECTION 8. AMENDMENT. Subsection 6 of section 15.1-27-01 of the North Dakota Century Code is amended and reenacted as follows:

6. If funds appropriated for distribution to districts as ~~per student and transportation~~ state aid become available after April first, the superintendent of public instruction shall distribute the newly available payments on or before June thirtieth.

SECTION 9. 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. The per student payment to which each school district is entitled for the first year of the biennium is two thousand ~~two~~ five hundred ~~eighty-seven~~ nine dollars. The per student payment to which each school district is entitled for the second year of the biennium is two thousand ~~three~~ six hundred ~~forty-seven~~ twenty-three 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.

SECTION 10. AMENDMENT. Section 15.1-27-05 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-05. (Effective through June 30, 2004) School district equalization factor. To determine the amount of payments due a school district, the superintendent of public instruction shall add the tuition apportionment payments, per student payments, special education aid, ~~transportation aid,~~ and teacher compensation payments for which a school district is eligible and from that total subtract the following:

1. The product of ~~thirty-two~~ thirty-four mills times the ~~latest available net assessed and equalized~~ taxable valuation of property in the district; and
2. The amount by which the unobligated general fund balance of the district on the preceding June thirtieth is in excess of seventy-five percent of its actual expenditures plus twenty thousand dollars.

(Effective after June 30, 2004) School district equalization factor.

1. To determine the amount of payments due a school district, the superintendent of public instruction shall add the tuition apportionment payments, per student payments, special education aid, ~~transportation aid,~~ and teacher compensation payments for which a school district is eligible and from that total subtract the following:

4. a. The product of ~~thirty-two~~ thirty-six mills times the ~~latest available net assessed and equalized~~ taxable valuation of property in the district;
 2. b. 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; and
 - c. If the mills levied by the district for general fund purposes, plus the mills levied for high school transportation and high school tuition purposes are fewer than one hundred forty, the number of mills by which the district's levies are below one hundred forty multiplied by the taxable valuation of property in the district.
2. Beginning July 1, 2006, and each year thereafter, the number of mills used by the superintendent of public instruction in determining the product required by subdivision a of subsection 1 must be increased by two over the number of mills used in determining the product required by that subdivision the previous year.

(Effective after June 30, 2008) School district equalization factor.

1. To determine the amount of payments due a school district, the superintendent of public instruction shall add the tuition apportionment payments, per student payments, special education aid, ~~transportation aid,~~ and teacher compensation payments for which a school district is eligible and from that total subtract the following:
 4. a. The product of ~~thirty-two~~ mills the number of mills prescribed in subsection 2 times the ~~latest available net assessed and equalized~~ taxable valuation of property in the district;
 2. b. The amount by which the unobligated general fund balance of the district on the preceding June thirtieth is in excess of ~~fifty~~ forty-five percent of its actual expenditures, plus twenty thousand dollars; and
 - c. If the mills levied by the district for general fund purposes, plus the mills levied for high school transportation and high school tuition purposes are fewer than one hundred forty, the number of mills by which the district's levies are below one hundred forty multiplied by the taxable valuation of property in the district.
2. The number of mills used by the superintendent of public instruction in determining the product required by subdivision a of subsection 1 must be increased by two over the number of mills used in determining the product required by that subdivision the previous year.

SECTION 11. AMENDMENT. Section 15.1-27-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-06. Per student payments - Weighting factors - High school students. The superintendent of public instruction shall make payments each year, as provided for in this section, to each school district operating a high school and to each school district contracting to educate high school students in a federal school, subject to adjustment as provided in section 15.1-27-21.

1. Each district having under seventy-five students in average daily membership in grades nine through twelve is entitled to receive the amount of money that results from multiplying the factor 1.625 adjusted by ~~seventy-five~~ eighty-five percent of the difference between 1.625 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, by the number of students in grades nine through twelve who are registered in that district, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction.
2. Each district having at least seventy-five but fewer than one hundred fifty students in average daily membership in grades nine through twelve is entitled to receive the amount of money that results from multiplying the factor 1.335 adjusted by ~~seventy-five~~ eighty-five percent of the difference between 1.335 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, by the number of students in grades nine through twelve who are registered in that district, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction.
3. Each district having at least one hundred fifty but fewer than five hundred fifty students in average daily membership in grades nine through twelve is entitled to receive the amount of money that results from multiplying the factor 1.24 adjusted by ~~seventy-five~~ eighty-five percent of the difference between 1.24 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, by the number of students in grades nine through twelve who are registered in that district, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction.
4. Each district having at least five hundred fifty students in average daily membership in grades nine through twelve is entitled to receive the amount of money that results from multiplying the factor 1.14 adjusted by ~~seventy-five~~ eighty-five percent of the difference between 1.14 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, by the number of students in grades nine through twelve who are registered in that district, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction.
5. Each district having an approved alternative high school education program is entitled to receive the amount of money that results from multiplying the factor in:

- a. Subsection 1 by the number of students registered in the alternative education program, times the per student payment provided for in section 15.1-27-04, if fewer than seventy-five students in average daily membership are enrolled in the alternative education program.
 - b. Subsection 2 by the number of students registered in the alternative education program, times the per student payment provided for in section 15.1-27-04, if at least seventy-five but fewer than one hundred fifty students in average daily membership are enrolled in the alternative education program.
 - c. Subsection 3 by the number of students registered in the alternative education program, times the per student payment provided for in section 15.1-27-04, if at least one hundred fifty but fewer than five hundred fifty students in average daily membership are enrolled in the alternative education program.
 - d. Subsection 4 by the number of students registered in the alternative education program, times the per student payment provided for in section 15.1-27-04, if at least five hundred fifty students in average daily membership are enrolled in the alternative education program.
6. In order to be eligible for enumeration under this section, a student:
- a. Must have completed the work of the eighth grade;
 - b. Must not have completed the work of the twelfth grade; and
 - c. Must be a resident of this state or a nonresident attending a school in this state under the auspices of a foreign student exchange program.

SECTION 12. AMENDMENT. Section 15.1-27-07 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-07. Per student payments - Weighting factors - Elementary school students. The superintendent of public instruction shall make payments each year, as provided for in this section, to each school district operating an elementary school and to each school district contracting to educate elementary students in a federal school, subject to adjustment as provided in section 15.1-27-21.

1. a. Each district having only a one-room rural school is entitled to receive the amount of money that results from multiplying the factor 1.28 adjusted by ~~seventy-five~~ eighty-five percent of the difference between 1.28 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, by the number of students in average daily membership in grades one through eight in that school, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction. The payment level provided for in this subdivision is applicable only to the first sixteen students.

- b. If the one-room rural school has more than sixteen students in average daily membership in grades one through eight, the district in which the school is located is entitled to receive ninety percent of the per student payment provided for in section 15.1-27-04 for each additional student. The district is not entitled to any payment for more than twenty students in average daily membership.
 - c. If a one-room rural school is located in a district having another elementary school, the weighting factor for the students in grades one through six must be based on the average daily membership in the district in grades one through six, as provided in this section.
 - d. If a one-room rural school is located in a school district with another school that has students in grade seven or eight, the weighting factor for the students in grade seven or eight must be the same as that provided for in subsection 5.
2. Except as provided in subsection 1, each school district having fewer than one hundred students in average daily membership in grades one through six is entitled to receive the amount of money that results from multiplying the factor 1.09 adjusted by ~~seventy-five~~ eighty-five percent of the difference between 1.09 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, by the number of students in average daily membership in grades one through six in the district, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction. The payment provided for in this subsection is applicable only to the first twenty-five students in average daily membership per classroom or per teacher.
 3. Each school district having at least one hundred students but fewer than one thousand students in average daily membership in grades one through six is entitled to receive the amount of money that results from multiplying the factor .905 adjusted by ~~seventy-five~~ eighty-five percent of the difference between .905 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, by the number of students in average daily membership in grades one through six in the district, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction. The payment provided for in this subsection is applicable only to the first thirty students in average daily membership per classroom or per teacher.
 4. Each school district having at least one thousand students in average daily membership in grades one through six is entitled to receive the amount of money that results from multiplying the factor .95 adjusted by ~~seventy-five~~ eighty-five percent of the difference between .95 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, by the number of students in average daily membership in grades one through six in the district, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is

that which represents the five-year average cost of the education per student in this category, as determined by the superintendent of public instruction. The payment provided for in this subsection is applicable only to the first thirty students in average daily membership per classroom or per teacher.

5. Each school district having students in grades seven and eight is entitled to receive the amount of money that results from multiplying the factor 1.01 adjusted by ~~seventy-five~~ eighty-five percent of the difference between 1.01 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, by the number of students in average daily membership in grades seven and eight in the district, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction. The payment provided for in this subsection is applicable only to the first thirty students in average daily membership per classroom or per teacher. The payments provided for in this subsection are not available for students who attend a one-room rural school if that school is the only one in the district that offers educational services to students in grades seven and eight.
6. Each school district having a special education program approved by the director of special education is entitled to receive, for each student who is enrolled in the program and who is at least three years of age but less than the compulsory age for school attendance, the amount of money that results from multiplying the factor 1.01 adjusted by ~~seventy-five~~ eighty-five percent of the difference between 1.01 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, by the number of special education students in average daily membership in the program who are at least three years of age but less than the compulsory age for school attendance, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction.
7.
 - a. Each school district operating a kindergarten as provided for in section 15.1-22-02 is entitled to receive the amount of money that results from multiplying the factor .50 adjusted by ~~seventy-five~~ eighty-five percent of the difference between .50 and the factor representing the five-year average cost of education per student for this category, as determined by the superintendent of public instruction, by the number of kindergarten students in average daily membership in the district, times the per student payment provided for in section 15.1-27-04. Beginning July 1, 2004, the factor is that which represents the five-year average cost of education per student in this category, as determined by the superintendent of public instruction. The payment provided for in this subsection is applicable only to the first twenty-five students in average daily membership per classroom or per teacher.
 - b. In order to receive the full per student payment available under this section, a district must operate a kindergarten program that

provides the equivalent of ninety full days of classroom instruction during a twelve-month period. A district is entitled to a prorated payment under this section if it operates a kindergarten program of shorter duration.

8. Each school district that educates students who are also enrolled in nonpublic schools is entitled to receive proportionate payments under this section.
9. Each school district is entitled to receive as much in total payments for elementary students as it would have received if it had the highest number of students in the next lower category.
10. A school district is not entitled to any payments provided for by this chapter unless each teacher employed by the district:
 - a. Holds a teaching license issued by the education standards and practices board; or
 - b. Has been approved to teach by the education standards and practices board.

SECTION 13. AMENDMENT. Subsection 1 of section 15.1-27-10 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~per student and transportation 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.

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 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 and unrestricted federal 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. If the quotient is less than the latest available statewide average taxable valuation per student and if the district's educational expenditure per student is below the most recent available statewide average cost of education per student, the superintendent of public instruction shall:
 4. 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;
 2. b. Multiply the result determined under ~~subsection 4~~ subdivision a by the number of students in average daily membership in grades one through twelve in the high school district;
 3. c. Multiply the result determined under ~~subsection 2~~ 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
 4. d. Multiply the result determined under ~~subsection 3~~ by thirty percent 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.
 - e. The result is the supplemental payment to which a high school district is entitled, in addition to any other amount provided under chapter 15.1-27.

SECTION 15. AMENDMENT. Subsection 4 of section 15.1-27-19 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~per student and transportation~~ 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 16. AMENDMENT. Subsection 4 of section 15.1-27-21 of the North Dakota Century Code is amended and reenacted as follows:

4. The superintendent of public instruction shall pay the amount due under this section within the limits of legislative appropriations for ~~per student state aid payments and transportation aid.~~

SECTION 17. AMENDMENT. Section 15.1-27-34 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-34. Transfer of funds prohibited - Youth correctional center. The superintendent of public instruction may not transfer any portion of the funds appropriated for ~~per student state aid payments and transportation aid~~ to the youth correctional center to support the provision of educational services by the youth correctional center.

SECTION 18. AMENDMENT. Section 15.1-27-37 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-37. Compensation of teachers - Claim for reimbursement - Rules.

1. On or before October first of each year or within thirty days after the conclusion of the negotiation process provided for in chapter 15.1-16, the board of a school district may file a claim with the superintendent of public instruction for the reimbursement of moneys to be expended by the district during the school year to ~~increase the~~ at least maintain the level of compensation of provided to teachers employed by the district during the 2002-03 school year.
2. The claim must include:
 - a. The number of full-time equivalent teachers employed by the district as of September fifteenth;
 - b. The number of full-time equivalent teachers ~~who will receive an increase in compensation over the amount paid during the previous~~ whose level of compensation will be at least equal to that provided during the 2002-03 school year; and
 - c. The total amount of ~~the increase in~~ any compensation increases provided to full-time equivalent teachers over the level of compensation provided during the 2002-03 school year.
3.
 - a. For the ~~2004-02~~ 2003-04 school year, the reimbursement provided for in this section may not exceed ~~one thousand dollars multiplied by the number of full-time equivalent teachers employed by the district as of September 15, 2004.~~
 - b. ~~Except as provided in subdivision c, for the 2002-03 school year, the reimbursement provided for in this section may not exceed three thousand dollars multiplied by the number of full-time equivalent teachers employed by the district as of September 15, 2002~~ 2003.
 - b. For the 2004-05 school year, the reimbursement provided for in this section may not exceed three thousand dollars multiplied by the number of full-time equivalent teachers employed by the district as of September 15, 2004.
 - c. For the ~~2002-03~~ 2003-04 school year, the reimbursement under this section for each individual employed as of September 15, ~~2002~~ 2003, as a full-time equivalent teacher for the first school year since becoming licensed to teach by the education standards and practices board or approved to teach by the education

standards and practices board, may not exceed one thousand dollars.

- d. For the 2004-05 school year, the reimbursement under this section for each individual employed as of September 15, 2004, as a full-time equivalent teacher for the first school year since becoming licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board, may not exceed one thousand dollars.
4. For purposes of this section, the claim of a district may include proportionate expenditures made by the district to compensate individuals employed as teachers by the special education unit or the area vocational and technology center to which the district belongs.
5. The superintendent of public instruction may adopt rules regarding claims for and the payment of reimbursements under this section.

SECTION 19. A new section to chapter 15.1-27 of the North Dakota Century Code is created and enacted as follows:

Approved joint powers agreement - Reimbursement by superintendent of public instruction.

1. The individual employed as a chief administrator for the purpose of carrying out the provisions of a joint powers agreement and any requirements under section 3 of this Act shall submit to the superintendent of public instruction, at the time and in the manner designated by the superintendent, receipts for expenses incurred during a school year in delivering services and programs under section 3 of this Act.
2. The superintendent of public instruction, upon verifying the receipts, shall reimburse the chief administrator of the joint powers agreement for any expenses incurred in delivering services and programs under the auspices of the joint powers agreement as provided in section 3 of this Act. The reimbursement may not exceed the lesser of:
- a. The total expenses incurred in delivering services and programs under section 3 of this Act; or
- b. Fifty thousand dollars.
3. The chief administrator shall deposit any moneys received under subsection 2 in the participating districts' joint operating fund.
4. The superintendent of public instruction may not provide any reimbursement to a chief administrator under this section unless the joint powers agreement under which the services and programs are delivered has been approved by the superintendent.

SECTION 20. AMENDMENT. Section 15.1-27-39 of the North Dakota Century Code is amended and reenacted as follows:

15.1-27-39. Annual salary - Minimum amount.

1. Beginning with the ~~2001-02~~ 2003-04 school year, the board of each school district shall provide to each full-time teacher, under contract for a period of nine months, a minimum salary level ~~of salary~~ for the contract period equal to at least ~~eighteen~~ twenty-one thousand ~~five hundred~~ dollars.
2. Beginning with the ~~2002-03~~ 2004-05 school year, the board of each school district shall provide to each full-time teacher, under contract for a period of nine months, a ~~base~~ minimum salary level for the contract period equal to at least ~~twenty~~ twenty-one thousand five hundred dollars.

SECTION 21. 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 may attend a school in a bordering state in accordance with section 15.1-29-02 under the following circumstances:
 - a. A student who lives within forty miles [64.37 kilometers] of another state or in a county bordering on another state may, with the approval of the school board, attend a public school 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.
 - c. 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.
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 ~~per student and transportation~~ state aid payments for a student attending an out-of-state school to the student's school district of residence.
 - 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.
 - c. ~~Transportation payments for a student attending school in a bordering state must be determined as provided in section 15.1-27-27.~~
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 22. AMENDMENT. Subsection 4 of section 15.1-29-06 of the North Dakota Century Code is amended and reenacted as follows:

4. A school district of residence may provide transportation to a student for whom tuition is paid under this section. If a school district of residence does not provide transportation to the student, it may be provided by the admitting district ~~and the admitting district is then entitled to state payments for the transportation of the student.~~

SECTION 23. AMENDMENT. Section 15.1-29-13 of the North Dakota Century Code is amended and reenacted as follows:

15.1-29-13. Tuition payments - Nonresident students.

1. a. Except as provided in this subsection, the board of a school district that admits a nonresident student shall charge and collect tuition for the student. Either the student's district of residence shall pay the tuition to the admitting district in accordance with section 15.1-29-12 or the student's parent shall pay the tuition to the admitting district in accordance with section 15.1-29-07.
 - b. A board may charge tuition for nonresident students enrolled in an approved alternative education program.
 - c. Except as otherwise provided, if a school district fails to charge and collect tuition for a nonresident student, the districts shall forfeit any ~~per student payment and transportation~~ state aid otherwise payable for the nonresident student.
2. a. The board of a school district may admit a nonresident student from another district in this state offering the same grade level as that in which the student is enrolled without a charge and collection

of tuition if the sending and admitting districts have entered into a written contract regarding the student's admission.

- b. For purposes of determining whether the same grade level is offered, two or more school districts cooperating with each other for the joint provision of educational services under a plan approved by the superintendent of public instruction must be considered to be a single district.
 - c. The contract must specify whether transportation is to be provided and, if so, by which district. If a school district of residence does not provide transportation to the student, it may be provided by the admitting district and the admitting district is then entitled to state payments for the transportation of the student.
 - d. A contract is not necessary if the nonresident student is enrolled in an approved alternative education program for which no tuition is charged.
 - e. A school district may admit a nonresident student described in section 15.1-31-07 from another school district in this state without a charge and collection of tuition and without a written agreement.
3. A school district may not charge or collect from a nonresident student, the student's parent, or the student's district of residence any fees or charges not otherwise assessed to all resident students.

SECTION 24. 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.

1. For purposes of applying this chapter, a student's school district of residence is the district in which the student resides:
 - a. 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;
 - b. 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;
 - c. 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
 - d. At the time the student is voluntarily admitted to a state-operated institution or to a state-licensed child care home or facility.
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.
 - a. If, after a student placement is made as provided for under subsection 1, the student's custodial parent establishes residency in another school district in this state, the school district in which the custodial parent has established residency becomes the student's school district of residence for purposes of paying tuition and tutoring charges under subsection 2.
 - b. The state shall pay the tuition and tutoring charges under subsection 2 from funds appropriated by the legislative assembly for ~~per student and transportation~~ state aid to schools:
 - (1) If, after a student placement is made as provided for under subsection 1, the student's custodial parent establishes residency outside this state; or
 - (2) If a court orders a termination of parental rights with respect to the student's parents.
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 are due and unpaid, the superintendent shall withhold an amount equal to the unpaid tuition from ~~per student payments and transportation~~ state aid otherwise payable to the student's school district of residence until the tuition due has 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 special education in the case of a student with disabilities or from ~~funds appropriated for per student~~ state aid payments and transportation aid 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. If the student's custodial parent establishes residency outside this state, or if a court orders a termination of parental rights with respect to the student's parents, the state shall pay the tuition and tutoring charges under subsection 2 from funds appropriated by the legislative assembly for ~~per student and transportation~~ state aid to schools.
8.
 - a. The placing agency shall provide written notice regarding an initial placement and all subsequent placements of a student, by registered mail, 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. The written notice must include any information requested by the superintendent of public instruction for purposes of determining payment responsibility.
 - c. 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 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 25. AMENDMENT. Subsection 1 of section 15.1-30-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The board of a school district may:
 - a. Provide for the transportation of a student to and from school; or
 - b. If acceptable to the student's parent, reimburse the parent for expenses incurred in providing meals and lodging to the student outside the student's home, ~~provided that the reimbursement may not exceed the amount permitted under subsection 4 of section 15.1-27-27.~~

SECTION 26. AMENDMENT. Section 15.1-30-05 of the North Dakota Century Code is amended and reenacted as follows:

15.1-30-05. Schoolbus transportation services - Optional fee. The board of a school district that has not been reorganized may charge a fee for the provision of schoolbus transportation service to students. ~~If the service began before July 1, 1981, the total fees charged may not exceed an amount equal to the difference between the state transportation payment and the lesser of the state average cost for transportation or the district's cost during the preceding school year. If the service started on or after July 1, 1981, the total fees charged may not exceed an amount equal to the difference between the state transportation payment and the school district's cost of transportation during the preceding school year. A district that has not previously provided transportation to students shall base its fees on estimated costs during the first year transportation is provided.~~

SECTION 27. AMENDMENT. Subsection 2 of section 15.1-30-15 of the North Dakota Century Code is amended and reenacted as follows:

2. a. The board of a school district that provides transportation to its students may contract with other local, state, or federal government entities for the joint provision and integration of transportation services to the public.
- b. A contract under this section must provide for the observation of all safety requirements otherwise imposed by law on schoolbuses, on school vehicles, and on schoolbus drivers when students are being transported.
- c. ~~Transportation services to students provided pursuant to this subsection qualify for state transportation aid under chapter 15.1-27. However, no payments may be made from state funds for any costs incurred as a result of a deviation from established schoolbus routes necessitated by a contract pursuant to this subsection.~~

SECTION 28. AMENDMENT. Section 15.1-31-05 of the North Dakota Century Code is amended and reenacted as follows:

15.1-31-05. Open enrollment - Transportation. A school district of residence may provide transportation to a student participating in open enrollment. If a district of residence does not provide transportation to a student participating in open enrollment, transportation may be provided by the admitting district, ~~and the admitting district is then entitled to state payments for the transportation of that student.~~

SECTION 29. AMENDMENT. Section 15.1-31-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-31-06. Open enrollment - School boards - Standards.

1. The board of each school district shall set standards for the acceptance and denial of applications for admittance under open enrollment as provided in section 15.1-31-01. The standards may address the capacity of a program, class, grade level, or school building. The standards may not address previous academic achievement,

participation in extracurricular activities, disabilities, English language proficiency, or previous disciplinary proceedings.

2. A board may also determine that applications for admittance under open enrollment, in accordance with this chapter, will not be considered.
3.
 - a. A school district participating in an open enrollment program may not give or offer to give a student remuneration, or directly exert influence on the student or the student's family, in order to encourage participation in the open enrollment program.
 - b. For purposes of this subsection, directly exerting influence means providing information about the school district to individuals who are not residents of that district unless the information is requested.
 - c. If the members of the board of a school district believe that another school district has violated this subsection, the board may file a complaint with the superintendent of public instruction. Upon receipt of a complaint alleging a violation of this subsection, the superintendent of public instruction shall hold a hearing and accept testimony and evidence regarding the complaint. If the superintendent finds that a school district has violated this subsection, the superintendent may withhold some or all of the ~~transportation~~ state aid payments to which the district would be otherwise entitled for a period of one year from the date of the finding. A decision by the superintendent under this subsection is appealable to the state board of public school education. A decision by the state board of public school education is final.

SECTION 30. 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. ~~The school district is entitled to state reimbursement for the provision of transportation services to the student. If transportation is provided by a student's parent, the superintendent may reimburse the school district only for mileage costs.~~

SECTION 31. TRANSPORTATION GRANTS - DISTRIBUTION.

1. The superintendent of public instruction shall distribute from the grants - state school aid line item in Senate Bill No. 2013, as approved by the fifty-eighth legislative assembly, to each school district in the state an amount equal to the state transportation aid payments received by the school district during the 2001-03 biennium.
2. If two or more school districts reorganize into a single district on or after July 1, 2003, the superintendent of public instruction shall forward to the newly reorganized district an amount equal to the transportation payments received by each of the districts participating in the reorganization during the 2001-03 biennium.

3. If a school district that received transportation payments during the 2001-03 biennium dissolves on or after July 1, 2003, the superintendent of public instruction shall forward a percentage of the amount equal to that which the dissolved district received for transportation aid payments during the 2001-03 biennium to each school district that enrolls students who attended the dissolved school district during its final year of operation. Each school district eligible for payment under this subsection is entitled to receive that percentage of the total amount payable which is the same as the percentage that the number of district's students who attended the dissolved school district during its final year of operation bears to the total number of students who attended the dissolved school district during its final year of operation.
4. During each year of the 2003-05 biennium, the superintendent of public instruction shall distribute one-half of the payments required by this section to school districts at the same time and in the same manner as required for state aid payments under section 15.1-27-01.

SECTION 32. LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying the manner in which elementary and secondary education is funded in this state and the feasibility and desirability of instituting alternative funding methods, including consideration of the amount of local contribution on a per resident basis. If the legislative council conducts this study, the legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

SECTION 33. NO CHILD LEFT BEHIND - COST ESTIMATE. The superintendent of public instruction shall confer with the United States secretary of education, the education commission of the states, and other public and nonpublic entities to determine the estimated costs that are likely to be incurred by this state during the ensuing eight years in order to meet the requirements of the No Child Left Behind Act of 2001. The superintendent of public instruction shall provide the information obtained to an interim committee designated by the legislative council.

SECTION 34. DATA ENVELOPMENT ANALYSIS - COMPLETION DATE - REPORT. The superintendent of public instruction shall complete the data envelopment analysis project, as set forth in Senate Bill No. 2032, as approved by the fifty-eighth legislative assembly, on or before September 1, 2004, and shall report any findings and conclusions to a committee designated by the legislative council, as soon after that date as practicable.

SECTION 35. SUPPLEMENTAL PAYMENTS - DISTRIBUTION. The superintendent of public instruction shall distribute from the grants - state school aid line item in Senate Bill No. 2013, as approved by the fifty-eighth legislative assembly, an amount for supplemental payments under section 15.1-27-11 equal to the amount that payments to school districts have been reduced as a result of the application of subdivision c of subsection 1 of section 15.1-27-05, as it is in effect after June 30, 2004.

SECTION 36. DISTRIBUTION OF DIFFERENCE IN PAYMENTS - HOLD HARMLESS PAYMENTS.

1. If funds appropriated by the legislative assembly to the grants - teacher compensation line item in Senate Bill No. 2013, as approved by the fifty-eighth legislative assembly, remain after completion of all statutory

obligations, to the extent of legislative appropriations, the superintendent of public instruction shall:

- a. Calculate the payment to which a school district is entitled during the 2003-05 biennium under this Act; and
 - b. Calculate the payment to which a school district would have been entitled during the 2003-05 biennium under this Act if the per student payments established in section 15.1-27-04 had included the total amount appropriated to the grants - teacher compensation payments line item in Senate Bill No. 2013, as approved by the fifty-eighth legislative assembly, and further provided that no requirements for teacher compensation were placed on school districts by section 15.1-27-37.
2. If the amount to which a school district is entitled during the biennium under this Act is less than the amount to which a school district would have been entitled under the parameters of subdivision b of subsection 1, the superintendent of public instruction shall forward the difference between the amounts to the school district on or before June 30, 2005. If insufficient moneys exist to fully meet the requirements of this subsection, the superintendent of public instruction shall prorate the payments according to that percentage of the amount available to which a school district is entitled.
 3. If any moneys remain after the superintendent of public instruction completes the requirements of subsections 1 and 2, the superintendent of public instruction shall use the remaining moneys to provide additional per student payments on a prorated basis, according to the average daily membership of each school district during the 2004-05 school year.

SECTION 37. CONTINGENT PAYMENTS - DISTRIBUTION. If any moneys appropriated for per student payments and transportation payments in the grants - state school aid line item in Senate Bill No. 2013 remain after payment of all statutory obligations for per student and transportation payments during the biennium beginning July 1, 2003, and ending June 30, 2005, the superintendent of public instruction shall distribute the remaining moneys as follows:

1. The superintendent of public instruction shall use the first \$250,000, or so much of that amount as is necessary, for the purpose of providing reimbursements to the chief administrators of joint powers agreements pursuant to section 19 of this Act.
2. The superintendent of public instruction shall use the next \$1,000,000, or so much of that amount as is necessary, for the purpose of providing reorganization bonuses, pursuant to section 15.1-12-11.1, to school districts having reorganizations effective after July 1, 2003, and before July 1, 2005. If insufficient moneys exist to fully meet the requirements of this subsection, the superintendent of public instruction shall prorate the payments according to that percentage of the amount available to which a school district is entitled.
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 average daily membership of each school district during the 2004-05 school year.

SECTION 38. TEACHER COMPENSATION - CONTINUATION OF EFFORT. The board of a school district shall consider continuing the efforts made in the 2001-03 biennium to increase teacher salaries throughout the state.

SECTION 39. APPROPRIATION - REORGANIZATION BONUSES. There is appropriated out of any moneys in the general 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 superintendent of public instruction for the purpose of providing a reorganization bonus to any school district having a reorganization effective on July 1, 2003, pursuant to section 15.1-12-11.1, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 40. APPROPRIATION. 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 providing supplemental payments to school districts under section 15.1-27-11, for the biennium beginning July 1, 2003, and ending June 30, 2005.

SECTION 41. REPEAL. Sections 15.1-27-26, 15.1-27-27, 15.1-27-28, 15.1-27-29, 15.1-27-30, and 15.1-27-31 of the North Dakota Century Code are repealed.

SECTION 42. EFFECTIVE DATE. Section 7 of this Act becomes effective on July 1, 2005.

Disapproved April 28, 2003
Filed April 28, 2003

CHAPTER 570**HOUSE BILL NO. 1015**

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

**OIL AND GAS AND GEOLOGICAL SURVEY
VACANCIES**

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 provide a continuing appropriation; to provide for an industrial commission review; to provide an exemption; and to authorize transfers.

VETO

May 2, 2003

The Honorable Janet Wentz
Speaker of the House
House Chambers
State Capitol
Bismarck, ND 58505

Re: Item Veto of HB 1015

Dear Madam Speaker:

Today I have signed HB 1015, but vetoed section 15 of the bill. The section provides that any vacancy, which occurs through retirement or resignation in the Oil and Gas Division or the Geological Survey, must remain vacant for the biennium. It provides no flexibility or management discretion to the Industrial Commission, which manages both agencies.

I recognize the Legislature's direction that the two agencies be consolidated during the biennium, and understand the desire to reduce employees. It is a goal that I can support, provided it is done in an appropriate manner, and will provide more efficient services to the people of North Dakota. We can accomplish the Legislature's goal administratively and in a much less disruptive manner. For these reasons, I have vetoed Section 15.

Sincerely,

John Hoeven
Governor

Disapproved May 2, 2003
Filed May 2, 2003

NOTE: For the full text of House Bill No. 1015, including section 15, see chapter 15.

CHAPTER 571**HOUSE BILL NO. 1421**

(Representatives Belter, Svedjan, Timm)
(Senators Holmberg, Nething)

**EMERGENCY COMMISSION PETITIONS AND
MEMBERS**

AN ACT to create and enact a new section to chapter 54-16 of the North Dakota Century Code, relating to the presentation of emergency request petitions to the emergency commission; to amend and reenact subsection 1 of section 54-16-00.1 and sections 54-16-01, 54-16-03, 54-16-04, 54-16-04.1, 54-16-04.2, 54-16-09, and 54-16-11.1 of the North Dakota Century Code, relating to emergency commission members, procedures employed by the emergency commission, and approvals by the budget section; and to repeal sections 54-16-10 and 54-16-11 of the North Dakota Century Code, relating to departmental emergency funds.

VETO

May 2, 2003

The Honorable Janet Wentz
House Chambers
Speaker of the House
State Capitol
Bismarck, ND 58505

Re: Veto of HB 1421

Dear Madam Speaker:

I am hereby vetoing HB 1421 relating to the Emergency Commission. Section 2 of the bill adds unnecessarily, additional members to the Emergency Commission and removes the duly elected Chairman of the Legislative Council.

Under current law, the Emergency Commission is comprised of the Governor, Secretary of State, the Chairman of the Legislative Council, and each Chairman of the Senate and House Appropriations Committees, giving the Legislature a majority of the members.

The Bill adds one additional legislative member, by placing both majority leaders on the Commission and removing the Chairman of Legislative Council and creates a super majority for Legislators, which is unnecessary. For these reasons, I have vetoed the bill.

Sincerely,

John Hoeven
Governor

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 54-16-00.1 of the North Dakota Century Code is amended and reenacted as follows:

1. "Emergency" means either a calamity or an unforeseen happening subsequent to the time the appropriation was made and which was clearly not within the contemplation of the legislative assembly and the governor.

SECTION 2. AMENDMENT. Section 54-16-01 of the North Dakota Century Code is amended and reenacted as follows:

54-16-01. Emergency commission - Members - Organization - Quorum - Meetings. The emergency commission consists of the governor, the ~~chairman of the legislative council~~ majority leaders of the senate and house of representatives, the secretary of state, and the chairmen of the senate and house of representatives appropriations committees. If the chairman of an appropriations committee ceases to be a member of the legislative assembly, the vice chairman of that committee succeeds to that position on the commission. An appropriations committee vice chairman may serve in the place of the appropriations committee chairman as a member of the commission at the request of the appropriate appropriations committee chairman, if the appropriations committee chairman is unable to attend a commission meeting. ~~The vice chairman of the legislative council~~ An assistant majority leader may serve as a member of the commission in the place of ~~the chairman of the legislative council~~ a majority leader at the request of the ~~chairman of the legislative council~~ majority leader if that individual is ~~-serving on the commission in another capacity or~~ is unable to attend a commission meeting. Four members of the commission constitute a quorum. The governor is the chairman and the secretary of state is the secretary of the commission. The commission shall meet at the call of the chairman.

SECTION 3. AMENDMENT. Section 54-16-03 of the North Dakota Century Code is amended and reenacted as follows:

54-16-03. Unlawful to expend more than appropriated - May secure approval from commission for use of other funds - Deficit void. A state officer may not expend, or agree or contract to expend, any amount in excess of the sum appropriated for that expenditure, and may not expend an amount appropriated for any specific purpose or fund or for any other purpose without prior approval in the form of a transfer approval or expenditure authorization as provided in this chapter. The office of management and budget shall provide information to the emergency commission with respect to all emergency requests. Any debt or deficit created by a state officer in violation of this section is void. ~~The emergency commission may not approve an expenditure of institutional income, other than gifts or grants, in excess of the institutional income appropriated to the institution by the legislative assembly.~~

SECTION 4. A new section to chapter 54-16 of the North Dakota Century Code is created and enacted as follows:

Submission of petition to emergency commission. When an emergency exists, a state officer may present to the emergency commission an itemized, verified petition requesting approval to transfer money and spending authority between funds or line items pursuant to section 54-16-04; accept and expend federal funds pursuant to section 54-16-04.1; accept and expend state contingency funds pursuant to section 54-16-09; or accept and expend other funds pursuant to section 54-16-04.2.

SECTION 5. AMENDMENT. Section 54-16-04 of the North Dakota Century Code is amended and reenacted as follows:

54-16-04. May order transfer of moneys between funds - Line item transfers - Order may draw from state treasury. A state officer may present to the emergency commission an itemized, verified petition requesting approval of a transfer of spending authority from the state contingencies appropriation, a transfer of money or spending authority between funds or line items, or expenditure of federal funds. The emergency commission shall request and receive information from, upon the director advice of the office of management and budget regarding the petition. If the emergency commission finds that an emergency exists, the emergency commission may order money or spending authority transferred from one fund or line item to another fund or line item belonging to or appropriated for the same institution or board or the same state enterprise, may order a transfer of spending authority from the state contingencies appropriation, may authorize expenditure of federal funds, or, in an extremity, may authorize money to be drawn from the state treasury to meet the emergency until the legislative assembly can make an appropriation available. The following transfers may not be, if authorized by the emergency commission without, require the approval by of the budget section of the legislative council:

1. A transfer of moneys or spending authority which would eliminate or make impossible the accomplishment of a program or objective funded by the legislative assembly.
2. A transfer exceeding fifty thousand dollars from one fund or line item to another fund or line item, unless the transfer is necessary to comply with a court order or to avoid:
 - a. An imminent threat to the safety of people or property due to a natural disaster or war crisis; or
 - b. An imminent financial loss to the state.

SECTION 6. AMENDMENT. Section 54-16-04.1 of the North Dakota Century Code is amended and reenacted as follows:

54-16-04.1. May authorize acceptance and disbursement of federal funds. The emergency commission with, upon the advice and counsel of the executive office of the management and budget, may authorize the state treasurer to receive any moneys not appropriated by the legislative assembly which are made available by any federal agency and which the legislative assembly has not indicated an intent to reject. The emergency commission may authorize passthrough federal funds from one state agency to another state agency. The emergency commission, with approval of the budget section of the legislative council if the amount under consideration exceeds fifty thousand dollars, may authorize any state officer to receive and expend federal moneys from the date such moneys become available until June thirtieth following the next regular legislative session. Approval by the budget section of the legislative council is not required for the acceptance of federal funds if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. Budget section approval is required before the expenditure of any funds accepted under these conditions. The expenditures must be consistent with state law and with the terms of the grant and the program may not commit the legislative assembly for matching funds in the future unless the program has first been approved by the legislative assembly. A state officer may not expend funds received

from the federal government which have not been specifically appropriated by the legislative assembly except as provided in this chapter. A state officer shall submit an expenditure plan with a request for approval under this section of expenditure of federal funds combined with or as part of a block grant for a new or existing program.

SECTION 7. AMENDMENT. Section 54-16-04.2 of the North Dakota Century Code is amended and reenacted as follows:

54-16-04.2. Commission may authorize acceptance and expenditure of moneys. ~~The~~ Upon a finding that an emergency exists, the emergency commission, upon the advice of the office of management and budget, with approval of the budget section of the legislative council if the amount under consideration exceeds fifty thousand dollars, may authorize a state officer to receive moneys from gifts, grants, donations, or other sources, not otherwise appropriated by the legislative assembly, for new or existing programs if the legislative assembly has not indicated an intent to reject the moneys or the program. The emergency commission may authorize the state officer to expend money received under this section from the date the money becomes available until June thirtieth following the next regular legislative session. Approval by the budget section of the legislative council is not required for the acceptance of moneys under this section if the acceptance is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state. Budget section approval is required before the expenditure of any funds accepted under these conditions.

SECTION 8. AMENDMENT. Section 54-16-09 of the North Dakota Century Code is amended and reenacted as follows:

54-16-09. Transfer of spending authority from state contingencies appropriation. ~~If the~~ The emergency commission ~~orders,~~ upon the advice of the office of management and budget, may order a transfer of spending authority from the state contingencies appropriation, ~~the amount ordered which~~ must be deducted from the state contingencies line item in the appropriation to the office of management and budget and added to the appropriate line item in the appropriation of the state officer who requested the transfer. The emergency commission, with approval of the budget section of the legislative council if the amount under consideration exceeds fifty thousand dollars, shall certify, by an approved motion recorded in its minutes, that the material, services, or purposes for which the authority was transferred are necessary and proper expenditures and, if an appropriation for that purpose was made by the legislative assembly, that the appropriation for that purpose is insufficient. ~~The office of management and budget and the emergency commission shall file the certificate as authority for a transfer under this section.~~ Approval by the budget section of the legislative council is not required if the transfer is necessary to avoid an imminent threat to the safety of people or property due to a natural disaster or war crisis or an imminent financial loss to the state.

SECTION 9. AMENDMENT. Section 54-16-11.1 of the North Dakota Century Code is amended and reenacted as follows:

54-16-11.1. Emergency commission may increase revenues and appropriation authority for intergovernmental service fund agencies. Upon presentation of ~~the~~ a verified petition under section 54-16-10 establishing that an emergency exists and the necessity for increased appropriation authority, the emergency commission shall meet to determine if additional demand from state agencies requires an increase in appropriation authority and revenue receipts for the

information technology department, central duplicating, surplus property, or roughrider industries division of the department of corrections and rehabilitation.

SECTION 10. REPEAL. Sections 54-16-10 and 54-16-11 of the North Dakota Century Code are repealed.

Disapproved May 2, 2003

Filed May 2, 2003

CHAPTER 572**SENATE BILL NO. 2015**

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

**ALLOTMENTS, INFORMATION TECHNOLOGY
RESTRUCTURING, BUDGETING, AND EMPLOYEE
REDUCTIONS**

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 for various transfers and financial transactions; to provide exemptions from section 54-44.1-11 of the North Dakota Century Code; to create and enact a new section to chapter 15-10, a new subsection to section 53-06.2-04, and a new section to chapter 54-59 of the North Dakota Century Code, relating to contracts for the provision of meals by institutions of higher education, the duties of the racing commission, and required information technology services from the information technology department; to create and enact section 18 of House Bill No. 1414, section 9 of House Bill No. 1012, section 16 of House Bill No. 1015, and section 2 of Senate Bill No. 2176 as approved by the fifty-eighth legislative assembly, relating to reporting disease outbreaks and quarantine of individuals and declaring that Act an emergency measure, to the speed limit on paved two-lane county and township highways and declaring that Act an emergency measure, to the partnership in assisting community expansion fund, the agriculture partnership in assisting community expansion fund, and the beginning farmer loan fund and declaring that Act an emergency measure, and to participation by retired political subdivision employees in the uniform group insurance program and declaring that Act an emergency measure; to amend and reenact sections 15-52-03, 15.1-31-07, 26.1-21-09, 34-06-04.1, 54-35-18, 54-35-18.1, and 54-35-18.2, subsection 2 of section 54-44.1-06, section 54-44.1-12, the new section to chapter 55-02 as created by section 2 of Senate Bill No. 2249 as approved by the fifty-eighth legislative assembly, and section 57-51.1-07.2 of the North Dakota Century Code, relating to tuition apportionment payments, the membership of the medical center advisory council, the reserve amount in the bonding fund, overtime or work-period claims, the expiration date and membership of the electric industry competition committee, preparation of budget data, budget allotments, the powers of the state historical board, and payments into the permanent oil tax trust fund; to provide statements of legislative intent; to require reports to the legislative assembly; to provide an exception to section 54-44.1-06 of the North Dakota Century Code, relating to the preparation of certain appropriation bills; to provide for reports to the budget section; to provide for a legislative council study; to provide for additional lodging reimbursement for members of the legislative assembly; to provide for state employee reductions and compensation pools; to provide for the transfer of state agency information technology positions; to provide an appropriation; to provide for a tax amnesty program; to provide an expiration date; and to declare an emergency.

VETO

May 2, 2003

The Honorable Jack Dalrymple
President of the Senate
Senate Chambers
State Capitol
Bismarck, ND 58505

Re: Item Veto of SB 2015

Dear Lt. Gov. Dalrymple:

Today I have signed SB 2015, but vetoed the following sections of the bill for reasons expressed below. These item vetoes have been carefully considered. I have discussed the basic concerns with the Legislative leadership and believe that some of these issues will be addressed during the upcoming Special Session.

Section 23: The Section requires that any allotment under 54-44.1-12 must be made to address any projected deficiency. The section does not represent sound budget management policy. It would allow a deficiency to be written into a biennial budget that would have to be paid for by the rest of state government if an allotment was required rather than properly budgeting for the deficiency at the outset. Likewise, an unforeseen deficiency during the budget cycle could force unwarranted cuts and jeopardize basic services because the allotment would have to include the deficiency. Budget flexibility and soundness are key principals of state government and of this administration. Section 23 does not comport with those principals and so I must veto it.

Sections 24, 28 and 29: These sections are all a part of a complex restructuring of the Informational Technology Department and IT functions within state government, that seek to achieve savings and efficiencies. I will support any system, legislation or other means that clearly demonstrates savings to the taxpayers, and more efficient delivery of service. Sections 24, 28 and 29 have not been shown to provide these results. They mandate some, but not all of state government must obtain IT services from ITD. They mandate by November 1, 2003, the transfer of 25 FTEs performing IT services in some agencies, to ITD. I favor efficiencies, cost savings, competition and compatibility in the State's information technology systems. I will work with the Legislature to those ends, but sections 24, 28 and 29 appear to create a maze of bureaucratic maneuverings that will lead us to different end. Therefore I must veto them.

Section 35: This section ventures into executive budget functions, a similar provision of which I vetoed in the 2001 Legislative Session. It mandates that four agencies submit hold even budgets for the 2005-2007 biennium. Those agencies are Department of Public Instruction, Department of Corrections and Rehabilitation, Treasurer, and Secretary of State. The executive branch should be free to prepare and submit a fiscally sound budget for each agency following the usual rigorous review and examination of the executive budget building process. That process will yield sound budgets that are subject to further review and examination during the following legislative session. Mandating four agencies to submit hold even budgets does not allow for sound planning into the coming budget cycle to consider changing

circumstances and needs. It does not represent sound budgeting policy, so I must veto it.

Sections 36, 37, 38 and 39: These sections all relate to reductions in full time equivalents and a potential salary adjustment for public employees. I support the Legislature's intent of reducing pressure upon the budget by finding permanent cost reductions. All of North Dakota will benefit from such a goal, including the taxpayers, and public employees. I will work with the Legislature to achieve that goal and in re-writing these provisions. But, I cannot support them as written as they are rigid and provide little flexibility or incentive for managers and employees to embrace the goal and seek its achievement. Some agencies will be able to provide no contribution to the reductions, while others may do their part while sharing cost savings with the rest of state government. The system must have management flexibility so that administrators can make decisions that will best serve the public interest and meet the goal. We should take stock in time honored management lessons and allow flexibility and discretion in meeting goals, and hold managers accountable for meeting them. These sections fall short of that direction so I must veto them as well.

In issuing these vetoes, I have discussed these issues with legislative leaders and hope to resolve many of them in the coming days of the special session. I welcome the effort and look forward to fashioning concluding bills that answer these concerns in a manner that more fully meets the needs of our state.

Sincerely,

John Hoeven
Governor

Disapproved May 2, 2003
Filed May 2, 2003

NOTE: For the full text of Senate Bill No. 2015, including sections 23, 24, 28, 29, 35, 36, 37, 38, and 39, see chapter 36.

INITIATED MEASURE APPROVED

CHAPTER 573

MULTI-STATE LOTTERY

An initiated measure for the amendment of section 25 of article XI of the Constitution of North Dakota, relating to directing the legislative assembly to authorize the state to join a multi-state lottery for the benefit of the state.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25 of article XI of the Constitution of North Dakota is amended and reenacted as follows:

Section 25. The legislative assembly shall not authorize any game of chance, lottery, or gift enterprises, under any pretense, or for any purpose whatever. However, the legislative assembly shall authorize the State of North Dakota to join a multi-state lottery for the benefit of the State of North Dakota, and, the legislative assembly may authorize by law bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations, civic and service clubs, or such other public-spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses.

Approved November 5, 2002

146,852 to 84,534

NOTE: This was measure No. 2 on the general election ballot.

INITIATED MEASURE DISAPPROVED

CHAPTER 574

YOUTH INITIATIVE

An initiated measure to create and enact chapter 15-62.4, a new subdivision to subsection 1 of section 57-38-01.2, and a new subsection to section 57-38-30.3 of the North Dakota Century Code, relating to creation of a Bank of North Dakota administered program providing for partial reimbursement of student loan payments for employed North Dakota residents under thirty years of age who have graduated from accredited post-secondary schools and an income tax credit of up to \$1,000 for employed North Dakota residents from twenty-one through twenty-nine years of age, for up to five years; and to provide an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF NORTH DAKOTA:

SECTION 1. Chapter 15-62.4 of the North Dakota Century Code is created and enacted as follows:

15-62.4-01. Student loan reimbursement - Administration - Student loan defined. The Bank of North Dakota shall administer a program for reimbursement of student loan repayments by eligible residents of this state. For purposes of this chapter, "student loan" means a loan from a financial institution, governmental entity, or accredited postsecondary education institution to a student and which is used by that student for expenses of attendance at an accredited postsecondary education institution.

15-62.4-02. Student loan reimbursement eligibility. To be eligible for reimbursement under this chapter, an individual must be a graduate with at least a two-year degree from an accredited postsecondary education institution, must be less than thirty years of age at the end of the calendar year, and for at least one hundred eighty days at the end of the calendar year must be a resident of this state and engaged in gainful employment or self-employed in this state. Reimbursement under this chapter is limited to a maximum of one thousand dollars per individual per year for a period of not more than five years, beginning with the first year for which an individual claims reimbursement under this chapter. Expenditures eligible for reimbursement under this chapter are limited to repayment of principal and interest of a nondelinquent student loan.

15-62.4-03. Student loan reimbursement. Upon presentation to the Bank of North Dakota of a verified statement of eligibility from an applicant, with attached statements from the lender or lenders of the amount the applicant repaid on a student loan or student loans during the calendar year, the Bank of North Dakota shall reimburse the applicant for up to one thousand dollars of student loan repayment expenditures by the applicant during the calendar year. If the Bank of North Dakota is the lender, the applicant is not required to file a statement from the lender of the amount of the student loan repaid and reimbursement to the applicant must first be credited against the applicant's unpaid balance of Bank of North Dakota student loans and any remaining amount must be paid to the applicant.

SECTION 2. A new subdivision of subsection 1 of section 57-38-01.2 of the North Dakota Century Code is created and enacted as follows:

Youth retention credit.

1. An individual is entitled to a credit against income tax liability as computed under section 57-38-29 or 57-38-30.3 if the individual is:
 - a. At least 21 years of age and less than thirty years of age at the end of the calendar year;
 - b. A resident of this state; and
 - c. Engaged in gainful employment or self-employment in this state for at least the last one hundred eighty days of the calendar year.
2. The credit under this section is limited to a maximum of one thousand dollars per individual per year for a period of not more than five years, beginning with the first year for which the individual claims the credit under this section. The credit may not exceed the individual's tax liability under this chapter.

SECTION 3. A new subsection of 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.

SECTION 4. EFFECTIVE DATE. Section 1 of this Act is effective for loan repayments after December 31, 2002. Sections 2 and 3 of this Act are effective for taxable years beginning after December 31, 2002.

Disapproved November 5, 2002

75,636 to 154,234

NOTE: This was measure No. 3 on the general election ballot.

REFERRED MEASURE DISAPPROVED

CHAPTER 575

FINANCIAL INFORMATION DISCLOSURE

Disapproval by referendum of Senate Bill No. 2191 of the Fifty-seventh Legislative Assembly, which concerned the disclosure of customer information by financial institutions, including banks and credit unions, and notification of privacy policies by financial institutions.

Disapproved June 11, 2002

31,805 to 87,446

NOTE: This was measure No. 2 on the primary election ballot.

CONSTITUTIONAL AMENDMENTS APPROVED

CHAPTER 576

SENATE CONCURRENT RESOLUTION NO. 4052

(Senators Krauter, G. Nelson)

(Approved by the Delayed Bills Committee)

ELECTION OF COUNTY OFFICERS

A concurrent resolution for the amendment of section 8 of article VII of the Constitution of North Dakota, relating to the residency of a candidate for county elective office and to permit the legislative assembly to provide for the election of a county elective officer, other than the sheriff, to serve in more than one county.

STATEMENT OF INTENT

This amendment would permit the legislative assembly to provide for the election of a county elective officer, other than the sheriff, to serve more than one county.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to section 8 of article VII 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 2002, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 8 of article VII of the Constitution of North Dakota is amended and reenacted as follows:

Section 8. Each county shall provide for law enforcement, administrative and fiscal services, recording and registration services, educational services, and any other governmental services or functions as may be provided by law. Any elective office provided for by the counties shall be for a term of four years. Elective officers shall be elected by the electors in the jurisdiction in which the elected officer is to serve. A candidate for election for sheriff must be a resident in the jurisdiction in which ~~they are the candidate~~ is to serve at the time of the election. The office of sheriff shall be elected. The legislative assembly may provide by law for the election of any county elective officer, other than the sheriff, to serve one or more counties provided the affected counties agree to the arrangement and any candidate elected to the office is a qualified elector of one of the affected counties.

Approved June 11, 2002

62,215 to 51,174

NOTE: This was measure No. 1 on the 2002 primary election ballot.

CHAPTER 577**SENATE CONCURRENT RESOLUTION NO. 4045**

(Senators Tomac, Stenehjem, Wardner)
(Representatives DeKrey, Nelson, Schmidt)

**TAXABLE STATUS OF LAND HELD FOR
CONSERVATION PURPOSES**

A concurrent resolution for the amendment of section 5 of article X of the Constitution of North Dakota, relating to the taxable status of land held for conservation or wildlife purposes; and to provide an effective date.

STATEMENT OF INTENT

This amendment eliminates the constitutional status of property tax exemption of land held for conservation or wildlife purposes and leaves to the Legislative Assembly the determination of whether those properties will be exempt from property taxes.

**BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF
REPRESENTATIVES CONCURRING THEREIN:**

That the following proposed amendment to section 5 of article X of the Constitution of North Dakota is agreed to and must be submitted to the qualified electors of North Dakota at the general election to be held in 2002, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 5 of article X of the Constitution of North Dakota is amended and reenacted as follows:

Section 5. Taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying the tax. The legislative assembly may by law exempt any or all classes of personal property from taxation and within the meaning of this section, fixtures, buildings and improvements of every character, whatsoever, upon land shall be deemed personal property. The property of the United States, to the extent immunity from taxation has not been waived by an act of Congress, property of the state, county, and municipal corporations, to the extent immunity from taxation has not been waived by an act of the legislative assembly, and property used exclusively for schools, religious, cemetery, charitable or other public purposes shall be exempt from taxation. Real property used for conservation or wildlife purposes is not exempt from taxation unless an exemption is provided by the legislative assembly. Except as restricted by this article, the legislative assembly may provide for raising revenue and fixing the situs of all property for the purpose of taxation. Provided that all taxes and exemptions in force when this amendment is adopted shall remain in force until otherwise provided by statute.

SECTION 2. EFFECTIVE DATE. If approved by the voters, this measure becomes effective for taxable years beginning after December 31, 2002.

Approved November 5, 2002

113,345 to 106,770

NOTE: This was measure No. 1 on the 2002 general election ballot.

CONSTITUTIONAL AMENDMENTS PROPOSED

CHAPTER 578

SENATE CONCURRENT RESOLUTION NO. 4013

(Senators Krebsbach, Tollefson)
(Representative Kretschmar)

CORPORATION VOTING AND RIGHTS

A concurrent resolution for the amendment of sections 6 and 9 of article XII of the Constitution of North Dakota, relating to cumulative voting and preemptive rights of corporate shareholders.

STATEMENT OF INTENT

This amendment would provide the same flexibility to all corporations in elections of their directors as is now enjoyed by cooperative associations only and would remove the requirement that existing stockholders consent to the issuance of additional stock.

BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the following proposed amendment to sections 6 and 9 of article XII 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 2004, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 6 of article XII of the Constitution of North Dakota is amended and reenacted as follows:

Section 6. In all elections for directors ~~or managers~~ of a corporation, each member or shareholder may cast the whole number of ~~his~~ the votes of the member or shareholder for one candidate, or distribute them upon two or more candidates, as ~~he~~ the member or shareholder may prefer, provided, ~~any cooperative~~ a corporation may adopt bylaws limiting the voting power of its ~~stockholders~~ members or shareholders.

SECTION 2. AMENDMENT. Section 9 of article XII of the Constitution of North Dakota is amended and reenacted as follows:

Section 9. ~~No~~ A corporation ~~shall~~ may not issue stock or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness ~~shall be~~ is void. The stock and indebtedness of corporations ~~shall~~ may not be increased except in pursuance of general law, ~~nor~~ without the consent of the persons holding the larger amount in value of the stock first obtained.

Filed March 18, 2003

NOTE: This will be measure No. 1 on the 2004 primary election ballot.

CHAPTER 579**HOUSE CONCURRENT RESOLUTION NO. 3069**

(Representatives Carlson, Belter, Devlin)
(Senators Flakoll, O'Connell, Wardner)

INITIATIVE MEASURE FISCAL IMPACT

A concurrent resolution for the amendment of section 2 of article III of the Constitution of North Dakota, relating to granting the legislative assembly the authority to provide a procedure for determining the fiscal impact of initiative measures.

STATEMENT OF INTENT

This measure authorizes the legislative assembly to provide for by law a procedure for determining the fiscal impact of initiative measures.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the following proposed amendment to section 2 of article III 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 2004, in accordance with section 16 of article IV of the Constitution of North Dakota.

SECTION 1. AMENDMENT. Section 2 of article III of the Constitution of North Dakota is amended and reenacted as follows:

Section 2. A petition to initiate or to refer a measure ~~shall~~ must be presented to the secretary of state for approval as to form. A request for approval ~~shall~~ must be presented over the names and signatures of twenty-five or more electors as sponsors, one of whom ~~shall~~ must be designated as chairman of the sponsoring committee. The secretary of state shall approve the petition for circulation if it is in proper form and contains the names and addresses of the sponsors and the full text of the measure.

The legislative assembly may provide by law for a procedure through which the legislative council may establish an appropriate method for determining the fiscal impact of an initiative measure and for making the information regarding the fiscal impact of the measure available to the public.

Filed March 24, 2003

NOTE: This will be measure No. 2 on the 2004 primary election ballot.

HOUSE CONCURRENT RESOLUTIONS

CHAPTER 580

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 Fifty-eighth 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 2004 and thus its public hearing responsibility for grants not approved by the Fifty-eighth 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 appropriations bill enacted by the Legislative Assembly is the Legislative Assembly's approval of and contains directions regarding the use of community services block grants moneys for the period ending September 30, 2005; 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 Fifty-eighth Legislative Assembly through September 30, 2005, 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, 2003

CHAPTER 581**HOUSE CONCURRENT RESOLUTION NO. 3002**

(Legislative Council)
(Family Law Committee)

TAX-EXEMPT PROPERTY IMPACT STUDY

A concurrent resolution directing the Legislative Council to study the total amount of tax-exempt property by county; the loss of tax revenues from flooded property and from previously taxable property that is purchased by tax-exempt entities, including ownership in trust for Indian tribes; and the impact of the tax status of these tax-exempt properties on the ability of local communities to provide social services, including child support enforcement services.

WHEREAS, it is necessary for local communities to fund and provide social services to residents of this state; and

WHEREAS, information on the effect of ownership of property by tax-exempt entities on the local communities of this state and the ability of these local communities to fund social services is not readily available; and

WHEREAS, a catalog of the acreage and the value of property owned by tax-exempt entities in each county in the state would be of value; and

WHEREAS, information is also needed on the effect of flooding of previously taxable property on the local communities and the ability of these local communities to fund the provision of social services;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the total amount of tax-exempt property by county; the loss of tax revenues from flooded property and from previously taxable property being purchased by tax-exempt entities, including ownership in trust for Indian tribes; and the impact of the tax status of these tax-exempt properties on the ability of local communities to provide social services, including child support enforcement services; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 18, 2003

CHAPTER 582**HOUSE CONCURRENT RESOLUTION NO. 3003**

(Legislative Council)
(Family Law Committee)

SOCIAL SERVICES FUNDING STUDY

A concurrent resolution directing the Legislative Council to study state and local funding obligations for social services, including child support enforcement services.

WHEREAS, in 1997 the Legislative Assembly enacted House Bill No. 1041, the "swap" legislation, which exchanged state and county administrative and funding responsibilities for economic assistance programs effective January 1, 1998; and

WHEREAS, the consolidation of county human service administration was one of the goals of the "swap" legislation and a review of whether that goal has been fully accomplished is necessary; and

WHEREAS, counties with Indian reservations and counties neighboring those counties are finding it increasingly difficult to fund social services, due in part to limited taxable property and increased social service needs; and

WHEREAS, there is a perceived inequity in requiring counties to fund social service programs such as child support enforcement services when there is limited county control over the program;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study state and local funding obligations for social services, including child support enforcement services; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 12, 2003

CHAPTER 583**HOUSE CONCURRENT RESOLUTION NO. 3004**

(Legislative Council)
(Judiciary A Committee)

PUBLIC DEFENDER SYSTEM STUDY

A concurrent resolution directing the Legislative Council to study the state's method of providing legal representation for indigent persons and the feasibility and desirability of establishing a public defender system.

WHEREAS, North Dakota is the only state to use a "pure" contract system for providing indigent defense services; and

WHEREAS, the state's current indigent defense contract system, in which presiding judges supervise the awarding of indigent defense contracts, raises conflict-related issues; and

WHEREAS, costs associated with the indigent defense contract system administered by the judicial branch continue to increase in greater proportion than most other costs of the judicial branch; and

WHEREAS, attorneys currently and formerly involved in the indigent defense contract process cite heavy caseload and inadequate compensation as issues that need to be addressed in the current system; and

WHEREAS, judicial districts in rural areas of the state are experiencing a shortage of attorneys who are willing to provide indigent defense services; and

WHEREAS, the Legislative Council's 2001-02 interim Judiciary A Committee, which was assigned the duty of studying the issues related to indigent defense, recommended that the issues be further studied and monitored;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the state's method of providing legal representation for indigent persons and the feasibility and desirability of establishing a public defender 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 Fifty-ninth Legislative Assembly.

Filed April 4, 2003

CHAPTER 584**HOUSE CONCURRENT RESOLUTION NO. 3007**

(Representatives R. Kelsch, Carlisle, Delmore, Haas, Hanson)
(Senator Kringstad)

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 Fifty-eighth Legislative Assembly, the following positions are designated as employee positions of the House and Senate and are to be paid the wages indicated:

HOUSE

Chief Clerk	\$114
Assistant chief clerk	100
Journal reporter	111
Calendar clerk	100
Bill clerk	95
Sergeant-at-arms	88
Administrative assistant to majority leader	104
Staff assistant to majority leader	88
Administrative assistant to minority leader	104
Staff assistant to minority leader	88
Administrative assistant to Speaker	88
Chief committee clerk	104
Appropriations Committee clerk	104
Assistant Appropriations Committee clerk	100
Committee clerk for three-day committee	100
Committee clerk for two-day committee	92
Assistant committee clerk	82
Deputy sergeant-at-arms	73
Chief page and bill book clerk	81
Legislative assistant	68

SENATE

Secretary of the Senate	\$114
Assistant secretary of the Senate	100
Journal reporter	111
Calendar clerk	100
Bill clerk	95
Sergeant-at-arms	88
Administrative assistant to majority leader	104
Staff assistant to majority leader	88
Administrative assistant to minority leader	104
Staff assistant to minority leader	88
Chief committee clerk	104
Appropriations Committee clerk	104
Assistant Appropriations Committee clerk	100

Committee clerk for three-day committee	100
Committee clerk for two-day committee	92
Assistant committee clerk	82
Payroll clerk	84
Deputy sergeant-at-arms	73
Chief page and bill book clerk	81
Legislative assistant	68

BE IT FURTHER RESOLVED, that each employee of the Fifty-eighth 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 House or the Senate, 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 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, 2003

CHAPTER 585**HOUSE CONCURRENT RESOLUTION NO. 3008**

(Representative Grosz)

ELECTRONIC HOME DETENTION STUDY

A concurrent resolution directing the Legislative Council to study the use of electronic home detention for nonviolent offenders.

WHEREAS, house arrest is included as a sentencing alternative for courts to impose as a condition of probation; and

WHEREAS, electronic home detention can be used as a form of house arrest, instead of imprisonment, for certain persons convicted of nonviolent offenses, such as driving while under the influence; and

WHEREAS, more extensive use of electronic home detention could lower workloads of department of corrections and rehabilitation personnel and save the state money while providing adequate security and meaningful punishment;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the use of electronic home detention for nonviolent offenders; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed April 3, 2003

CHAPTER 586**HOUSE CONCURRENT RESOLUTION NO. 3009**

(Representatives Kempenich, D. Johnson, Froelich)
(Senators Bowman, Flakoll, Klein)

DISASTER ASSISTANCE FOR FARMERS URGED

A concurrent resolution urging Congress to provide sufficient emergency natural disaster assistance for farmers and ranchers.

WHEREAS, natural disasters can take many forms, including drought, excessive moisture, hurricanes, earthquakes, floods, excessive heat, and insect devastation; and

WHEREAS, natural disasters are a constant threat to America's farmers and ranchers and can severely hurt even the best run agricultural operations; and

WHEREAS, natural disasters devastated United States agricultural producers in 2001 and 2002; and

WHEREAS, farmers and ranchers need more disaster assistance than is available under current programs to pay all or part of the production costs incurred during the disaster years, to pay essential family living expenses, to reorganize farming and ranching operations, and to refinance certain agricultural debts; and

WHEREAS, North Dakota state university estimated that North Dakota producers incurred \$168 million in net crop losses and \$55 million in direct livestock losses due to drought conditions in 2002; and

WHEREAS, North Dakota state university estimated that this state has incurred more than \$866 million in direct and indirect economic losses due to drought conditions in 2002; and

WHEREAS, passing emergency natural disaster assistance is the single-most important action that the United States Congress can take for farmers, ranchers, and rural communities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the Congress to provide sufficient emergency natural disaster assistance for farmers and ranchers; 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, and to each member of the North Dakota Congressional Delegation.

Filed January 13, 2003

CHAPTER 587**HOUSE CONCURRENT RESOLUTION NO. 3010**

(Representatives Gulleeson, Amerman, Drovdal, Kempenich)
(Senators Bowman, Heitkamp)

GRAZING IN NATIONAL GRASSLANDS URGED

A concurrent resolution urging Congress to require the United States Department of Agriculture Forest Service to implement a management plan that supports the right of North Dakota ranchers to graze their traditional numbers of livestock in the national grasslands and that allows the mineral resources within the national grasslands to be developed in a reasonable manner.

WHEREAS, 17 national grasslands extend east from the Rocky Mountains to north central Texas and three additional national grasslands extend west from the Rocky Mountains in the Great Basin states of Oregon, California, and Idaho; and

WHEREAS, the state of North Dakota is home to three national grasslands - the Cedar River National Grassland, the Sheyenne National Grassland, and the Little Missouri National Grassland; and

WHEREAS, the Cedar River National Grassland consists of 6,700 acres; and

WHEREAS, the Sheyenne National Grassland consists of 70,180 acres of federal land associated with 64,769 acres of privately owned land located in Ransom and Richland Counties and supplies seasonal forage for approximately 80 ranching operations; and

WHEREAS, the Little Missouri National Grassland, which consists of 1,028,051 acres, is the largest and most northern grassland in the nation and supplies seasonal forage for more than 467 ranching operations; and

WHEREAS, the national grasslands are federal lands administered by the United States Department of Agriculture Forest Service; and

WHEREAS, the United States Department of Agriculture Forest Service is charged with administering almost 4,000,000 acres in a fashion that sustains grassland ecosystems while allowing for the production of various goods and services, and supporting and maintaining rural economies and lifestyles; and

WHEREAS, the most recent management plan promulgated by the United States Department of Agriculture Forest Service would result in a potentially major reduction of grazing in the national grasslands located in this state, thereby resulting in a devastating loss to the fragile economy of these rural areas of North Dakota and an economic loss to residents of the counties; and

WHEREAS, 30 percent of North Dakota's oil and gas wells, which produce 36 percent of the crude oil supply for the Tesoro refinery in Mandan, are located within the Little Missouri National Grassland; and

WHEREAS, oil and gas exploration and production and related activities have historically accounted for 58 percent of the economy of the four North Dakota counties comprising the Dakota Prairie Grasslands; and

WHEREAS, the proposed management plan will eliminate or restrict access to 234,460 acres of the 992,870 acres in the grasslands, making 24 percent of the national grasslands virtually off limits for oil and gas exploration and development, resulting in the loss of additional jobs and further damage to the economies of the state as a whole and the local communities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the Congress of the United States to require the United States Department of Agriculture Forest Service to implement a management plan that supports the right of North Dakota ranchers to graze their traditional numbers of livestock in the national grasslands and that allows the mineral resources within the national grasslands to be developed in a reasonable manner; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States, the chief of the United States Department of Agriculture Forest Service, and to each member of the North Dakota Congressional Delegation.

Filed March 18, 2003

CHAPTER 588**HOUSE CONCURRENT RESOLUTION NO. 3011**

(Representative Belter)
(Senator J. Lee)

OPEN RECORDS AND DISCLOSURE PENALTY STUDY

A concurrent resolution directing the Legislative Council to study the North Dakota open records statutes and the appropriateness of the penalties for an unauthorized disclosure of certain records.

WHEREAS, there are over two hundred sections of the North Dakota Century Code which declare records confidential or address the handling of confidential records; and

WHEREAS, although North Dakota Century Code Section 12.1-13-01 provides that a person who knowingly discloses confidential information is guilty of a class C felony, various other sections of law provide conflicting penalties for the unauthorized disclosure of confidential information; and

WHEREAS, because of the severity of the sanctions for the unauthorized disclosure of confidential information, a comprehensive study of statutory provisions relating to the confidentiality of records and the appropriateness of the penalties for the unauthorized disclosure of certain records is necessary;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the North Dakota open records statutes and the appropriateness of the penalties for unauthorized disclosure of certain records; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed April 4, 2003

CHAPTER 589**HOUSE CONCURRENT RESOLUTION NO. 3012**

(Representative Weisz)
(Senator Trenbeath)

DOT CONSTRUCTION ARBITRATION STUDY

A concurrent resolution directing the Legislative Council to study the laws of this state concerning arbitration of construction issues with the Department of Transportation.

WHEREAS, it is the responsibility of the Legislative Assembly to review existing laws to ensure that the laws address the problems the laws are intended to rectify; and

WHEREAS, it is necessary from time to time for the Department of Transportation to arbitrate issues concerning construction contracts; and

WHEREAS, recent use of arbitration has raised many issues and concerns with the current law and system; and

WHEREAS, there is some concern with whether certain issues may be arbitrable and whether certain issues should be handled by the courts; and

WHEREAS, mandatory arbitration may constrict the ability of the Department of Transportation to best resolve contract disputes;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the laws of this state concerning arbitration of construction issues with the Department of Transportation; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 18, 2003

CHAPTER 590**HOUSE CONCURRENT RESOLUTION NO. 3013**

(Representative Weisz)
(Senator Trenbeath)

HIGHWAY ABANDONMENT STUDY

A concurrent resolution directing the Legislative Council to study the laws of this state concerning abandonment and vacation of sections of routes of the state highway system.

WHEREAS, it is the responsibility of the Legislative Assembly to review existing laws to ensure that the laws address the problems the laws are intended to rectify; and

WHEREAS, it becomes necessary from time to time for the Department of Transportation to abandon sections of routes of the state highway system; and

WHEREAS, current law does not provide sufficient guidance regarding the process for abandoning a section of a route of the state highway system; and

WHEREAS, current law does not provide sufficient guidance regarding whether the Department of Transportation has continuing jurisdiction or authority over the abandoned section of a route of the state highway system;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the laws of this state concerning abandonment and vacation of sections of routes of the state highway 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 Fifty-ninth Legislative Assembly.

Filed March 18, 2003

CHAPTER 591**HOUSE CONCURRENT RESOLUTION NO. 3015**

(Representatives M. Klein, Bellew, Price)
(Senators Fischer, Krebsbach, O'Connell)

**NORTHWEST AREA WATER SUPPLY PROJECT AND
WATER DELIVERY TO EASTERN NORTH DAKOTA
SUPPORTED**

A concurrent resolution expressing the legislative assembly's support for construction of the Northwest Area Water Supply Project and delivery of water to eastern North Dakota.

WHEREAS, many areas and localities in northwestern North Dakota do not enjoy safe drinking water, and the water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances; and

WHEREAS, many areas and localities in northwestern North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply; and

WHEREAS, supplementation of the water resources of northwestern North Dakota with water supplies from the Missouri river, utilizing a pipeline transmission and delivery system, may be the only alternative to provide northwestern North Dakota with a safe, good quality, dependable source, and adequate quantity of water; and

WHEREAS, the Red River basin needs a dependable supply of water for the cities of Fargo and Grand Forks, smaller communities, rural water systems, industry, agricultural processing, manufacturing, and other purposes, and to protect and enhance economic stability and quality of life for the growing population of the Red River basin; and

WHEREAS, failure to provide a dependable long-term water supply will jeopardize future economic opportunities dependent on water, including industry, agricultural processing, manufacturing, municipal growth, recreation, and fish and wildlife in the Red River basin and thus adversely affect the entire state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the fifty-eighth legislative assembly expresses its support for construction of the Northwest Area Water Supply Project and delivery of water to eastern North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor, State Engineer, each member of the State Water Commission, the President of the United States, the Secretary of the Interior, the Commissioner of Reclamation, the Prime Minister of Canada, the Minister of Foreign Affairs of Canada, the Premier of the Province of Manitoba, and each member of the North Dakota Congressional Delegation.

Filed March 26, 2003

CHAPTER 592**HOUSE CONCURRENT RESOLUTION NO. 3018**

(Representatives Headland, Hawken, Iverson)

HIGH-VOLUME GRAIN TERMINAL STUDY

A concurrent resolution directing the Legislative Council to study the impact of high-volume grain terminals on local highway systems and possible methods of mitigating the impact.

WHEREAS, changes in the economics of transporting agricultural products have prompted the reduction in number, but have increased the size, of grain terminals in this state; and

WHEREAS, the roads leading to these fewer but larger facilities experience significantly increased traffic volumes; and

WHEREAS, the local resources to address the impact of the increased traffic volumes on the local highway systems are the same as those available prior to the creation of these larger facilities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the impact of high-volume grain terminals on local highway systems and possible methods of mitigating the impact; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 18, 2003

CHAPTER 593**HOUSE CONCURRENT RESOLUTION NO. 3019**

(Representatives Nelson, Glassheim, Headland, Nicholas)
(Senators Flakoll, Krauter)

CUBA TRAVEL RESTRICTIONS LIFTING URGED

A concurrent resolution urging the Congress of the United States to pass legislation that will allow United States citizens to freely travel to the Republic of Cuba.

WHEREAS, in response to the communist revolution in Cuba, the United States imposed economic sanctions on the Republic of Cuba in 1962; and

WHEREAS, the Trade Sanctions Reform and Export Enhancement Act of 2000 reauthorized the direct commercial cash-only sales of agricultural products, food, and medicine to the Republic of Cuba; and

WHEREAS, many of the primary commodities produced in North Dakota are sought for import by the Republic of Cuba; and

WHEREAS, a study conducted by Texas A&M University estimated North Dakota would rank ninth of the 50 states in the nation in terms of sales of agricultural and food product shipments to the Republic of Cuba with projected sales of up to \$37.8 million per year and employment of up to 1,010 people; and

WHEREAS, North Dakota's participation in the Cuban market would not have been possible without the foresight and market promotion efforts of the North Dakota Farm Bureau; and

WHEREAS, the United States Department of Agriculture anticipates the Republic of Cuba will rise from a ranking of 180th in 2000 to become the 33rd most important purchaser of agricultural and food product purchases from United States-based companies; and

WHEREAS, Cuban government officials indicate they expect food imports from the United States to total \$950 million in 2003 and to reach \$1.4 billion annually by 2005 or 2006; and

WHEREAS, United States citizens are prohibited from traveling to the Republic of Cuba for recreational purposes, thereby inhibiting opportunities for further trade expansion with the Republic of Cuba due to its financial shortfall;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the Congress of the United States to pass legislation that will allow United States citizens to freely travel to the Republic of Cuba; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the United States Senate and House of Representatives minority and majority leaders and to each member of the North Dakota Congressional Delegation.

Filed March 26, 2003

CHAPTER 594**HOUSE CONCURRENT RESOLUTION NO. 3020**

(Representatives Weiler, Berg, Boucher, Thoreson)
(Senators O'Connell, Stenehjem)

CLOSE-UP DAY DECLARATION

A concurrent resolution declaring February 10, 2003, "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 North Dakota Close-Up program has been in existence for 16 years; and

WHEREAS, 176 North Dakota high school students and 54 teachers will participate in the 2003 North Dakota Close-Up program;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly declares February 10, 2003, "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 26, 2003

CHAPTER 595

HOUSE CONCURRENT RESOLUTION NO. 3021

(Representatives Mueller, D. Johnson, Nicholas)
(Senators Fischer, Flakoll, Nichols)

USDA NOT TO PREEMPT GRAIN WAREHOUSE AUTHORITY

A concurrent resolution urging the United States Department of Agriculture not to preempt states' rights to regulate grain merchandising activities at grain warehouses that are licensed under the United States Warehouse Act, and further urging Congress to take corrective action if the United States Department of Agriculture is unwilling or unable to take corrective action.

WHEREAS, the United States Department of Agriculture has adopted a rule to preempt states' rights to regulate grain merchandising activities at grain warehouses that are licensed under the United States Warehouse Act; and

WHEREAS, this rule was adopted without proper public notice and opportunity to comment; and

WHEREAS, the United States Department of Agriculture does not have a regulatory plan in place to adequately protect farmers who sell grain on a cash sale basis to federally licensed grain warehouses; and

WHEREAS, the United States Department of Agriculture does not have a mechanism in place to adequately inform farmers of what protections are and are not available to patrons of federally licensed grain warehouses; and

WHEREAS, the United States Department of Agriculture is not equipped to promptly respond to patron complaints concerning the day-to-day business operations of grain elevators all across the country; and

WHEREAS, the actions of the United States Department of Agriculture may ultimately diminish competition in local grain markets to the disadvantage of farmers; and

WHEREAS, the existing system of federally regulated warehousing activities and state regulated grain merchandising activities has served farmers well for decades; and

WHEREAS, the proposed system of exclusive federal regulation and oversight in subsequent insolvency proceedings will leave farmers with fewer protections and trust fund resources than they currently have;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the United States Department of Agriculture to rescind its pending rule to preempt states' rights to regulate merchandising activities at federally licensed grain warehouses and, absent

prompt corrective action, that the Congress of the United States act to restore states' rights to regulate grain merchandising activities at federally licensed grain warehouses; 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 18, 2003

CHAPTER 596

HOUSE CONCURRENT RESOLUTION NO. 3023

(Representatives Warnke, Delmore, Wald)
(Senators Andrist, Krebsbach)

REGIONAL DENTAL SCHOOL STUDY

A concurrent resolution directing the Legislative Council to study the desirability and feasibility of establishing a regional dental school in North Dakota within the North Dakota University System and in conjunction with the school of dentistry at the University of Minnesota.

WHEREAS, there are 56 dental schools in the United States; and

WHEREAS, 7,700 students applied for admission to dental school in 2000, which represented a reduction of almost 14 percent since 1999 and a reduction of almost 21 percent since 1997; and

WHEREAS, 4,234 students, or about 55 percent of applicants, were first-year enrollees in dental schools in 2000; and

WHEREAS, the declining number of applicants to dental schools has been attributed at least in part to a reluctance by students to assume more educational debt and assumptions about the difficulty of gaining admittance to dental school; and

WHEREAS, a national decline in the applicant pool will make it more difficult for rural states to recruit and retain dentists; and

WHEREAS, North Dakota already ranks well below the national average with respect to the number of practicing dentists and 16 counties in this state have been designated as dental health professional shortage areas; and

WHEREAS, a recent survey showed that more than 36 percent of the dentists practicing in North Dakota were beyond the age of 50 and that by 2008 over 40 percent of the dentists who were practicing in North Dakota in 1998 will have retired; and

WHEREAS, the shortage of dental health professionals will seriously affect the oral health of many North Dakotans, and in particular, that of low-income North Dakotans; and

WHEREAS, the shortage of dental health professionals in North Dakota could be significantly reduced if not alleviated by encouraging students to pursue careers in dentistry and by providing them the opportunity to pursue a portion of the necessary curriculum in this state; and

WHEREAS, a regional dental school concept in conjunction with an established dental school may provide students greater exposure to the values and opportunities of a rural dental practice setting;

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 a regional dental school in North Dakota within the North Dakota University System and in conjunction with the school of dentistry at the University of Minnesota; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed April 3, 2003

CHAPTER 597**HOUSE CONCURRENT RESOLUTION NO. 3024**

(Representatives Warnke, Brusegaard, Delmore, N. Johnson)
(Senators Bowman, Lindaas)

VETERINARY SCHOOL STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing a regional school of veterinary medicine and providing preference for North Dakota resident students who specialize in food animal clinical studies at the out-of-state veterinary schools participating in the professional student exchange program within the North Dakota University System budget.

WHEREAS, veterinarians have played and will need to continue playing a vital role in the livestock industry, in caring for nondomesticated animals, and in caring for the companion animals of our citizens; and

WHEREAS, there is a recognized shortage of food animal veterinarians to serve the livestock industry in rural North Dakota; and

WHEREAS, it is in the best interest of North Dakota citizens to ensure that there are ample numbers of highly qualified veterinarians able and willing to provide medical services to all animals for which the citizens of North Dakota are directly or indirectly responsible; and

WHEREAS, there are presently only 27 veterinary medical colleges in the United States; and

WHEREAS, if North Dakota students wish to pursue careers in veterinary medicine, they must do so at out-of-state institutions such as Colorado State University, Iowa State University, Kansas State University, Oregon State University, Washington State University, the University of Minnesota, and the University of California - Davis; and

WHEREAS, North Dakota students who graduate from schools of veterinary medicine in other states are faced with significant debt repayment obligations and often find that those states offer better employment and specialization opportunities, as well as higher salary levels than those that could be achieved in food animal veterinary practice in North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the feasibility and desirability of establishing a regional school of veterinary medicine and providing preference for North Dakota resident students who specialize in food animal clinical studies at the out-of-state veterinary schools participating in the professional exchange grant program within the North Dakota University System budget; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed April 11, 2003

CHAPTER 598**HOUSE CONCURRENT RESOLUTION NO. 3025**

(Representatives Price, Devlin, Weisz)
(Senators Fischer, Holmberg, J. Lee)

MEDICARE UNIFORMITY URGED

A concurrent resolution urging Congress to make immediate changes in those Medicare policies that discriminate against senior citizens who reside in rural states and to implement national benefit and service provider policies that are more uniform in their application.

WHEREAS, it has been a long-standing obligation of the federal government to pay for the health care of this country's senior citizens; and

WHEREAS, the federal government taxes working citizens uniformly to fund the Medicare program, regardless of where those citizens reside; and

WHEREAS, under the current Medicare payments to those who provide services to this country's senior citizens vary significantly between urban and rural states; and

WHEREAS, because of this unequal payment, senior citizens who reside in rural states do not receive the same array of services as those senior citizens who reside in urban states; and

WHEREAS, national health care programs such as Medicare must not be allowed to penalize senior citizens who reside in rural states by subjecting them to less coverage and thereby fewer services than those received by senior citizens in urban states;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges Congress to make immediate changes in those Medicare policies that discriminate against senior citizens who reside in rural states and to implement national benefit and service provider policies that are more uniform in their application; 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 Health and Human Services, the administrator of the Centers for Medicare and Medicaid Services, and to each member of the North Dakota Congressional Delegation.

Filed March 26, 2003

CHAPTER 599**HOUSE CONCURRENT RESOLUTION NO. 3026**

(Representative Monson)
(Senator Trenbeath)

E85 FUEL USE STUDY

A concurrent resolution directing the Legislative Council to study the use of E85 fuel by the state.

WHEREAS, North Dakotans consume approximately 373 million gallons of gasoline each year and approximately 20 percent of that gallonage contains 10 percent ethanol; and

WHEREAS, the size of North Dakota's ethanol market is therefore in the range of 8 million gallons per year and the state's existing production capacity is in the range of 30 million gallons annually; and

WHEREAS, excess ethanol is marketed in other states; and

WHEREAS, ethanol is a homegrown fuel that helps the nation to become independent from imported oil and helps the nation's balance of trade; and

WHEREAS, ethanol is made from corn, a renewable resource, and a crop grown in abundance in North Dakota; and

WHEREAS, the state has the capacity to produce 10.5 million gallons of ethanol annually, utilizing 4 million bushels of corn; and

WHEREAS, ethanol is available in either a lower-level blend, 10 percent, or a high-level blend, 85 percent, and corn-based E85 fuel has been found to reduce greenhouse gas emissions by as much as 39 to 46 percent when compared to gasoline; and

WHEREAS, the Governor has directed the Department of Transportation to use a 10 percent ethanol-blended fuel in the state's 2,300-vehicle fleet; and

WHEREAS, ethanol production adds up to 30 cents to every bushel of corn and produces a nutritious livestock byproduct; and

WHEREAS, farmers benefit from the production of ethanol not only from higher corn prices but also from collective enterprises to build ethanol production facilities; and

WHEREAS, value-added agriculture enterprises create new jobs and help the state's farmers add substantial value to their crops;

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 the use of E85 by 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 Fifty-ninth Legislative Assembly.

Filed March 18, 2003

CHAPTER 600**HOUSE CONCURRENT RESOLUTION NO. 3027**

(Representatives Hunskor, Froelich, Haas, Metcalf)
(Senators Nething, Nichols)

VETERANS DAY EDUCATION URGED

A concurrent resolution urging the Superintendent of Public Instruction, all North Dakota school district superintendents, and the boards of all North Dakota school districts to work with local, state, and federal military and veterans' organizations to observe and promote Veterans Day by developing and disseminating to students in the elementary and secondary schools of this state educational materials that strengthen students' awareness of the contributions and sacrifices made by veterans, proper flag etiquette, and the continued necessity of participation in the armed services so that freedom can be enjoyed by everyone.

WHEREAS, North Dakotans are among the millions who have served in the armed forces of this country; and

WHEREAS, North Dakotans who served in the armed forces have, through their contributions and sacrifices, demonstrated their heroism and their unwavering love of this country; and

WHEREAS, the flag is symbolic of the freedom our veterans' contributions and sacrifices have provided and which our armed forces continue to defend; and

WHEREAS, in recent years, fewer and fewer individuals and families have had close personal ties to those who served in the armed forces of this country; and

WHEREAS, our younger citizens are consequently coming of age without having an appropriate understanding of the important accomplishments and achievements resulting from service in the armed forces of this country; and

WHEREAS, as our younger citizens mature, they will need to understand that the defense of freedom, however defined, comes at a cost that can never be repaid; and

WHEREAS, as our younger citizens mature, they will need to understand our country's history of military action, the proper etiquette and use of the flag, and the continued need for civilian control of and participation in the armed forces;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the Superintendent of Public Instruction, all North Dakota school district superintendents, and the boards of all North Dakota school districts to work with local, state, and federal military and veterans' organizations to observe and promote Veterans Day by developing and disseminating to students in the elementary and secondary schools of this state educational materials that strengthen students' awareness of the contributions and

sacrifices made by veterans, proper flag etiquette, and the continued need for participation in the armed services so that freedom can be enjoyed by everyone; and

BE IT FURTHER RESOLVED, that veterans' organizations be requested to provide written information to public events facilities throughout the state regarding proper flag etiquette and use; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Superintendent of Public Instruction, each North Dakota school district superintendent, and the board of each North Dakota school district.

Filed April 25, 2003

CHAPTER 601**HOUSE CONCURRENT RESOLUTION NO. 3028**

(Representatives Porter, Carlisle, Dosch, Drovdal, Severson)
(Senator Kilzer)

MEDICARE REIMBURSEMENT INCREASE URGED

A concurrent resolution urging Congress to increase Medicare reimbursement for health care providers, to use an appropriate amount of the federal budget to equalize Medicare rates within North Dakota and within the nation, and to increase funding of the Medicare ambulance reimbursement fee schedule.

WHEREAS, North Dakota's Medicare recipients are entitled to the same health care services as other senior citizens in the United States; and

WHEREAS, Medicare has historically reimbursed rural health care providers at a considerably lower rate than urban health care providers; and

WHEREAS, there is great disparity of reimbursement among North Dakota providers; and

WHEREAS, home health care is an integral service in North Dakota which allows individuals to be expediently discharged from acute care facilities, thereby allowing individuals to be cared for at home and to avoid nursing homes; and

WHEREAS, Medicare is implementing an ambulance reimbursement fee schedule that will negatively affect ambulance services across the state; and

WHEREAS, there is a need for access to emergency care and primary care in rural North Dakota which is jeopardized by inadequate Medicare reimbursement;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the Congress of the United States to increase Medicare reimbursement for health care providers, to use an appropriate amount of the federal budget to equalize Medicare rates within North Dakota and within the nation, and to increase Medicare ambulance reimbursement; and

BE IT FURTHER RESOLVED, that the Fifty-eighth Legislative Assembly invites the United States Senate Finance Committee to meet in North Dakota to address these concerns related to Medicare; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the United States Department of Health and Human Services, the administrator of the Centers for Medicare and Medicaid Services, the chairman of the United States Senate Finance Committee, the chairman of the United States House of Representatives Committee on Ways and Means, and to each member of the North Dakota Congressional Delegation.

Filed March 26, 2003

CHAPTER 602**HOUSE CONCURRENT RESOLUTION NO. 3031**

(Representatives Brusegaard, Berg, Nicholas)
(Senators Flakoll, Klein, Nichols)

**BIOTECHNOLOGY AND GENETIC RESEARCH AT
NDSU URGED**

A concurrent resolution urging North Dakota State University to host the Center for Genetic Research and become a national and international leader in biotechnology research.

WHEREAS, the state of North Dakota is the number one state in the nation in the production of durum and hard red spring wheat; and

WHEREAS, North Dakota wheat producers have suffered economic losses in excess of \$870,000,000 during the 1999-2001 crop years due to wheat diseases; and

WHEREAS, biotechnology holds great promise for the future in fighting wheat diseases; and

WHEREAS, questions continue to be raised about the safety of transgenic crops and where research will be conducted to provide scientific answers to those questions; and

WHEREAS, programs at North Dakota State University include a comprehensive research and development plan for wheat and durum that includes research and analysis necessary for making recommendations regarding new transgenic varieties, including the advisability and timing of their release; research and analysis necessary for making recommendations regarding the proper handling, production, and disposition of new transgenic varieties; and research and analysis necessary for making recommendations regarding the transportation, marketing, and testing of transgenic varieties; and

WHEREAS, a Center for Genetic Research located at North Dakota State University would advance new uses of biotechnology to develop superior crop varieties and at the same time provide protection against any potential negative economic or health effects arising from the development of such technology;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges North Dakota State University to host the Center for Genetic Research and become a national and international leader in biotechnology research; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the State Board of Higher Education and the president of North Dakota State University.

Filed March 26, 2003

CHAPTER 603**HOUSE CONCURRENT RESOLUTION NO. 3032**

(Representatives Warnke, Aarsvold, Delmore)
(Senators Lyson, Traynor)

**METHAMPHETAMINE TREATMENT FACILITIES
STUDY**

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of converting vacant public school buildings in rural areas into methamphetamine detoxification and treatment facilities.

WHEREAS, declining population in rural areas of the state has resulted in the consolidation of schools leaving a number of public school buildings vacant; and

WHEREAS, between 1993 and 2001, the state's inmate population increased by 65 percent and is projected to increase another 21 percent between 2002 and 2012; and

WHEREAS, 28 percent of all inmate admissions in 2001 were the result of drug offenses and more than one-third of male admissions and one-half of female admissions reported daily drug use before admission; and

WHEREAS, the manufacture and use of methamphetamines in the state has reached epidemic proportions; and

WHEREAS, converting vacant public school buildings to methamphetamine detoxification and treatment facilities may be an option that would use vacant school buildings and help ease the overcrowding problems in the corrections system;

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 converting vacant public school buildings in rural areas into methamphetamine detoxification and treatment facilities; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 26, 2003

CHAPTER 604**HOUSE CONCURRENT RESOLUTION NO. 3034**

(Representative DeKrey)

CIVIL COMMITMENT LAWS STUDY

A concurrent resolution directing the Legislative Council to study the civil commitment laws of North Dakota, chapter 25-03.1, court decisions concerning civil commitment, and the civil commitment laws of the other states.

WHEREAS, the North Dakota civil commitment law, codified as chapter 25-03.1, was enacted in 1977 and has not received a comprehensive review since 1993; and

WHEREAS, treatment practices and services for both substance abuse and mental illness have changed markedly in that time with many more services being delivered at the community level; and

WHEREAS, the current North Dakota civil commitment law requires cooperation and coordination between diverse entities within the state, including the Department of Human Services, state's attorneys and law enforcement, as well as other interested parties; and

WHEREAS, with the changes in practice, research, and need in North Dakota, it would be timely to perform a comprehensive study of chapter 25-03.1 and to recommend changes to the law to reflect the evolution of treatment practices and services;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the civil commitment laws of North Dakota, chapter 25-03.1, court decisions concerning civil commitment, and the civil commitment laws of other states; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed April 4, 2003

CHAPTER 605**HOUSE CONCURRENT RESOLUTION NO. 3035**

(Representatives Devlin, Brusegaard, Weisz)
(Senators Andrist, Fischer, Mutch)

LIBERTY DAY

A concurrent resolution proclaiming March 16, 2003, as Liberty Day.

WHEREAS, Americans' rights and liberties are rooted in the Declaration of Independence and the United States Constitution; and

WHEREAS, James Madison, who later served as President of the United States, was a primary drafter of the Constitution and is often referred to as the "Father of the Constitution"; and

WHEREAS, James Madison also presented to Congress for ratification of the first 10 amendments to the Constitution, which are known as the Bill of Rights; and

WHEREAS, James Madison was born on March 16, 1751;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That March 16, 2003, be designated as Liberty Day in honor of the anniversary of the birth of James Madison; and

BE IT FURTHER RESOLVED, that all citizens be encouraged to recognize the importance of the Declaration of Independence and the United States Constitution and its Bill of Rights and be encouraged to exhibit the responsibility of preserving our form of constitutional self-government.

Filed March 6, 2003

CHAPTER 606**HOUSE CONCURRENT RESOLUTION NO. 3036**

(Representatives Kretschmar, Drovdal, Wikenheiser)
(Senator Erbele)

**MISSOURI RIVER CORRIDOR ECONOMIC RECOVERY
URGED**

A concurrent resolution urging Congress to enact legislation for the economic recovery of North Dakota's Missouri River corridor.

WHEREAS, the 11 counties comprising the Missouri River corridor in North Dakota lost more than 500,000 acres of valuable river bottomlands as a result of construction of the Missouri River reservoirs under the federal Flood Control Act of 1944, causing an annual loss of millions of dollars in economic gross product and an additional annual loss in personal income as well as other serious impacts to individuals, political subdivisions, and North Dakota's Indian Nations; and

WHEREAS, operation of the Pick-Sloan Missouri River dams has provided great benefits to the downstream states but relatively few benefits to the 11 counties directly affected by the projects; and

WHEREAS, counties affected by the Pick-Sloan Missouri River dams have been working diligently to bring about some economic recovery to help alleviate the losses caused by the project during the last 50 years; and

WHEREAS, it has been determined that the water and land resources of the 11 counties are key to the economic growth of these counties; and

WHEREAS, the North Dakota Water User's Association supports a proposed North Dakota Missouri River Corridor Economy Recovery Act under which the federal government would appropriate funds to the Bank of North Dakota over a 10-year period, to be used to rebuild infrastructure lost over the 50-year period through inundation caused by the main stem Missouri River dams; and

WHEREAS, the North Dakota Irrigation Caucus is in the early stages of revising a strategic plan, Irrigation 2020, to develop, strengthen, and expand irrigation in North Dakota; and

WHEREAS, if the federal government appropriated \$600 million dollars to the Bank of North Dakota for a period of 10 years, the Bank could invest this money and use the interest to help the corridor counties to rebuild their infrastructure that was destroyed by construction of the Pick-Sloan Missouri River dams;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the Congress of the United States to enact legislation for the economic recovery of North Dakota's Missouri River corridor; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor, the United States Secretary of the Interior, and each member of the North Dakota Congressional Delegation.

Filed March 26, 2003

CHAPTER 607**HOUSE CONCURRENT RESOLUTION NO. 3037**

(Representatives Grande, Belter, Wald)
(Senators Lyson, Stenehjem, Trenbeath)

**HUMAN SERVICES DELIVERY AND CRIMINAL
PROCESS STUDY**

A concurrent resolution directing the Legislative Council to study the needs of individuals with mental illness, drug and alcohol addictions, and physical or developmental disabilities, including individuals with multiple needs, and how the state responds to those needs; the long-term plans for the State Hospital, the Developmental Center at Westwood Park, Grafton, state and county correctional facilities, and other state facilities and the relationships among those facilities; the impact and availability of community services; the state's criminal justice process from arrest to release; alternatives to incarceration; and the effectiveness of incarceration and treatment.

WHEREAS, changes in clinical practices and service delivery systems have created a need for new and different responses in caring for individuals with mental illness and drug and alcohol addictions; and

WHEREAS, community-based mental health treatment, service, and support options have been developed to support an individual's recovery in or near the individual's family and community; and

WHEREAS, a 2002 study of the operations and facilities of the Department of Corrections and Rehabilitation projected that the number of inmates in the state's prison system will continue to grow by approximately three percent annually; and

WHEREAS, the 2002 study indicated that the Department of Corrections and Rehabilitation will need additional bed space to avoid a critical prison capacity shortfall, especially for the female offenders; and

WHEREAS, consideration has been given to whether collocation of patients and prisoners is appropriate; and

WHEREAS, treatment and other programs that provide alternatives to incarceration may reduce the number of inmates and reduce recidivism;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the needs of individuals with mental illness, drug and alcohol addictions, and physical or developmental disabilities, including individuals with multiple needs, and how the state responds to those needs; the long-term plans for the State Hospital, the Developmental Center at Westwood Park, Grafton, state and county correctional facilities, and other state facilities and the relationships among those facilities; the impact and availability of community services; the state's criminal justice process from arrest to release;

alternatives to incarceration; and the effectiveness of incarceration and treatment; and

BE IT FURTHER RESOLVED, that in conducting the study, the Legislative Council solicit testimony from interested parties, including individuals receiving services, the individuals' families, administrators and staff at state and community facilities, the Department of Human Services, the Department of Corrections and Rehabilitation, advocacy groups, and the governing boards of state facilities providing services to those individuals; and

BE IT FURTHER RESOLVED, that in conducting the study, the Legislative Council study the cost-effectiveness and efficiency of incarcerating large numbers of inmates in a large facility; and

BE IT FURTHER RESOLVED, that the Legislative Council may contract with an independent party to conduct the study; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed April 17, 2003

CHAPTER 608**HOUSE CONCURRENT RESOLUTION NO. 3038**

(Representatives Warnke, Carlson, Kerzman)
(Senators Erbele, Krauter)

**FEDERAL FAMILY PLANNING FUNDS PROHIBITIONS
URGED**

A concurrent resolution urging Congress to permit states to enact prohibitions on the use of federal family planning funds by private and public agencies.

WHEREAS, title X of the federal Public Health Service Act [Pub. L. 91-572; 84 Stat. 1506; 42 U.S.C. 300] provides grants to public and private agencies for family planning programs; and

WHEREAS, title X and its corresponding regulations require that agencies receiving title X funds provide counseling on, and referrals for, abortion; and

WHEREAS, the State of North Dakota, reflecting a policy of favoring childbirth over abortion, has enacted section 14-02.3-02, prohibiting the use of state and federal funds for family planning by any person or public or private agency that performs, refers, or encourages abortion; and

WHEREAS, the federal preemption clause prevents the state from enforcing section 14-02.3-02 if a person or agency receives any title X funds; and

WHEREAS, the federal government provides title X grants to both public and private agencies, thereby compelling states to accept title X grants or lose the funds to private agencies with less accountability to the people of North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the Congress of the United States to permit states to enact prohibitions on the use of grants provided under title X of the federal Public Health Service Act [Pub. L. 91-572; 84 Stat. 1506; 42 U.S.C. 300] by public and private agencies operating in the state; 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 26, 2003

CHAPTER 609**HOUSE CONCURRENT RESOLUTION NO. 3039**

(Representative Boucher)

WATER PROJECT INTERFERENCE AND ARSENIC STANDARDS

A concurrent resolution strongly encouraging the Governor, Attorney General, State Water Commission, and state agencies to continue aggressive action against individuals, organizations, and entities interfering with the development and progress of state water projects, including the Northwest Area Water Supply Project, the Southwest Pipeline Project, Devils Lake flooding, delivery of water to eastern North Dakota, development of water resources for irrigation purposes, and development of projects to control flooding, and urging the Environmental Protection Agency to relax the recently promulgated rule lowering the allowable level of arsenic in drinking water for affected cities in North Dakota.

WHEREAS, areas of the arid west-central region of North Dakota do not enjoy safe drinking water and do not have sufficient quantities of water to ensure a dependable, long-term supply of water which areas to the south currently enjoy; and

WHEREAS, many cities and rural areas in the Northwest Area Water Supply Project have domestic water supplies of less than desirable quality; and

WHEREAS, the Northwest Area Water Supply Project will pump Missouri River water from Lake Sakakawea as far north as Sherwood, as far east as Bottineau, and as far west as Divide County and will supply water to the city of Minot; and

WHEREAS, using Missouri River water to supply the Northwest Area Water Supply Project will be advantageous in that the residents of North Dakota, including the far west, it will receive a clean and abundant supply of water providing a more inviting home for potential businesses and industries which will strengthen local economies and result in more and better jobs for North Dakotans; and

WHEREAS, a safe, dependable supply of water is critical to the economic viability of the state and future economic development; and

WHEREAS, individuals, organizations, and entities have opposed North Dakota water projects for political rather than scientific reasons; and

WHEREAS, the Environmental Protection Agency has recently promulgated rules reducing the allowable level of arsenic in drinking water from 50 parts per billion to 10 parts per billion; and

WHEREAS, several cities in North Dakota are being challenged to meet the stricter drinking water standard for arsenic; and

WHEREAS, as many as 30 public water systems in North Dakota which currently comply with drinking water standards may find it extremely difficult to

comply with the new drinking water standard for arsenic in the short timeframe before the rules take effect;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-ninth Legislative Assembly strongly encourages the Governor, Attorney General, State Water Commission, and state agencies to continue aggressive action against individuals, organizations, and entities interfering with the development and progress of state water projects, including the Northwest Area Water Supply Project, the Southwest Pipeline Project, Devils Lake flooding, delivery of water to eastern North Dakota, development of water resources for irrigation purposes, and development of projects to control flooding, and urging the Environmental Protection Agency to relax the recently promulgated rule lowering the allowable level of arsenic in drinking water for affected cities in North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor, Attorney General, State Engineer, each member of the State Water Commission, the chief of the Environmental Health Section of the State Department of Health, the director of the Division of Municipal Facilities of the Environmental Health Section of the State Department of Health, the administrator of the Environmental Protection Agency, the regional administrator for Region VIII of the Environmental Protection Agency, and to each member of the North Dakota Congressional Delegation.

Filed April 23, 2003

CHAPTER 610**HOUSE CONCURRENT RESOLUTION NO. 3040**

(Representatives Warner, N. Johnson, Martinson)
(Senators Fischer, Lyson, Taylor)

MISSOURI RIVER MASTER MANUAL UPDATE URGED

A concurrent resolution urging the President of the United States, the Secretary of the Army, and the United States Army Corps of Engineers to adopt and implement an updated Missouri River Master Water Control Manual that gives fair consideration to the substantial recreation values present on Lake Sakakawea, Lake Oahe, and the Missouri River in North Dakota.

WHEREAS, potential for economic growth and long-term stability in western North Dakota rests to an increasing degree on the recreational usability of and tourist visitations to Lake Sakakawea, Lake Oahe, and the Missouri River in North Dakota; and

WHEREAS, visitations to Lake Sakakawea, Lake Oahe, and the Missouri River in North Dakota are forecast to increase dramatically due to the bicentennial celebration of the exploration of the Missouri River by Lewis and Clark; and

WHEREAS, after 50 years since the closing of the Garrison Dam the federal government generally and the United States Army Corps of Engineers specifically have failed to adequately develop the recreation potential that exists in Lake Sakakawea, Lake Oahe, and the Missouri River in North Dakota; and

WHEREAS, failure of the federal government and the United States Army Corps of Engineers to facilitate development of recreation potentials will result in an unsatisfactory experience for the hundreds of thousands of North Dakota visitors expected during the Lewis and Clark Bicentennial; and

WHEREAS, the United States Army Corps of Engineers' delays in accounting for contemporary system uses and economic growth potential have severely hampered private and local government recreation development along Lake Sakakawea, Lake Oahe, and the Missouri River in North Dakota; and

WHEREAS, system management based on the current Missouri River Master Water Control Manual during the current and recent droughts has unnecessarily caused Lake Sakakawea and Lake Oahe water levels to fall to crisis levels; thus, compounding the negative environment for state, tribal, and local governments and the private sector to develop the economic potential of one of North Dakota's most important natural resources; and

WHEREAS, system management based on the current Missouri River Master Water Control Manual effectively gives unfair, higher priority to downstream business interests at the expense of upstream business, recreation, and environmental interests; and

WHEREAS, any proposed change to the current Missouri River Master Water Control Manual included in the United States Army Corps of Engineers' revised draft environment impact statement would be an improvement for endangered species in

the Missouri River System, specifically the pallid sturgeon, least tern, and piping plover; and

WHEREAS, the United States Army Corps of Engineers has delayed updating its Missouri River Master Water Control Manual even though the mandatory deadline for such an update has long passed;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the President to direct the United States Army Corps of Engineers to complete and release a final, updated Missouri River Master Water Control Manual as its highest priority and to commit sufficient funds and other resources to fully develop the recreation potentials of the Missouri River System in North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Division Commander of the Northwestern Division of the United States Army Corps of Engineers; the Secretary of the Army; the Secretary of the Interior; the District Engineer, Omaha District, United States Army Corps of Engineers; the Governor; each member of the State Water Commission; and each member of the North Dakota, South Dakota, Wyoming, and Montana Congressional Delegations.

Filed April 14, 2003

CHAPTER 611**HOUSE CONCURRENT RESOLUTION NO. 3041**

(Representatives Warner, N. Johnson, Martinson)
(Senators Fischer, Lyson, Taylor)

**LEWIS AND CLARK FEDERAL FACILITY
IMPROVEMENT URGED**

A concurrent resolution urging the President of the United States, Secretary of the Army, and the United States Army Corps of Engineers to improve, rehabilitate, and repair visitor facilities, event sites, and other areas within their jurisdiction in North Dakota expected to experience significant increases in visitation as a result of the bicentennial commemoration of the Lewis and Clark Expedition.

WHEREAS, in the year 2002 the United States Army Corps of Engineers identified a \$25 million need and promised to aggressively pursue funding for the improvement, rehabilitation, and repair of Lewis and Clark Expedition facilities on the Lewis and Clark route on the Missouri River; and

WHEREAS, the United States Army Corps of Engineers prioritized the locations for upgrading according to the level of importance to the original Lewis and Clark Expedition; and

WHEREAS, the United States Army Corps of Engineers spent \$3.25 million during fiscal years 2001 and 2002 and budgeted \$1.3 million for fiscal year 2003 for Lewis and Clark preparation work, which is far less than the announced need; and

WHEREAS, the United States Army Corps of Engineers promised to review its overall program execution to find funds and direct those funds to prioritized Lewis and Clark Expedition projects; and

WHEREAS, the Lewis and Clark exploratory party spent more than 160 days and nights in what is now North Dakota, making North Dakota one of the most significant states to the expedition; and

WHEREAS, the Bismarck-Mandan-Washburn-Stanton and New Town, North Dakota, national signature events are two of only 15 designated Lewis and Clark national signature event sites in the United States of America; and

WHEREAS, an influx of hundreds of thousands of people from all over the nation and the world are expected to visit North Dakota to commemorate the Lewis and Clark Expedition; and

WHEREAS, the United States Congress enacted a Demonstration Lakes Initiative of which Lake Sakakawea is designated a pilot lake;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the President of the United States, the Secretary of the Army, and the United States Army Corps of Engineers to make good on representations and promises made to improve, rehabilitate, and repair facilities, event sites, and other areas expected to experience significant increases in visitation as a result of the bicentennial commemoration of the Lewis and Clark Expedition; and

BE IT FURTHER RESOLVED, that the Fifty-eighth Legislative Assembly urges the President of the United States, the Secretary of the Army, and the United States Army Corps of Engineers to continue to improve, rehabilitate, and repair sites and facilities on Lake Sakakawea under the provisions of the Demonstration Lakes Initiative; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President of the United States; Division Commander of the Northwestern Division of the United States Army Corps of Engineers; the Secretary of the Army; the District Engineer, Omaha District, United States Army Corps of Engineers; the Governor; and each member of the North Dakota Congressional Delegation.

Filed April 11, 2003

CHAPTER 612**HOUSE CONCURRENT RESOLUTION NO. 3042**

(Representatives Price, Ruby, Warner)
(Senators Krebsbach, O'Connell, Taylor)

NORTHWEST VENTURE COMMUNITIES SUPPORTED

A concurrent resolution expressing the Legislative Assembly's support and endorsement for the Northwest Venture Communities, Inc., project to reduce poverty and improve the quality of life in North Dakota.

WHEREAS, the Northwest Area Foundation has selected Northwest Venture Communities, Inc., as a potential regional partner to reduce poverty and improve the quality of life in Bottineau, Burke, McHenry, McLean, Mountrail, Pierce, Renville, and Ward Counties and for the Three Affiliated Tribes of Fort Berthold; and

WHEREAS, the eight counties and the Fort Berthold Reservation are actively participating in the project and working together to reduce poverty and improve the quality of life in North Dakota; and

WHEREAS, the State of North Dakota is also active in reducing poverty and improving its quality of life;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly expresses its support and endorses the efforts of Northwest Venture Communities, Inc., to reduce poverty and improve the quality of life in North Dakota; and

BE IT FURTHER RESOLVED, that the state collaborate to assist in this effort; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the trustees and chairman of the Northwest Area Foundation and to the Governor.

Filed March 26, 2003

CHAPTER 613**HOUSE CONCURRENT RESOLUTION NO. 3043**

(Representatives Carlson, Belter, Timm)

ESTATE TAX ELIMINATION URGED

A concurrent resolution urging Congress to eliminate the estate tax.

WHEREAS, under tax relief legislation passed in 2001, the estate tax was temporarily phased out, not permanently eliminated; and

WHEREAS, women and minorities are very often owners of small and medium-sized businesses, and the estate tax prevents their children from reaping the rewards of a lifetime of trying to make a better life; and

WHEREAS, farmers and other small business owners will face losing their farms and businesses if the federal government resumes the heavy taxation of citizens at death; and

WHEREAS, employees suffer when they lose their jobs when small and medium-sized businesses are liquidated to pay estate taxes and because high capital costs depress the number of new businesses that could offer them a job; and

WHEREAS, if the estate tax had been repealed in 1996, over the next nine years it has been estimated the United States economy would have averaged as much as \$11 billion per year in extra output, and an average of 145,000 additional new jobs would have been created; and

WHEREAS, the persistent uncertainty created by the estate tax sunset provision prevents families and small businesses from taking advantage of the temporary repeal; and

WHEREAS, having repeatedly passed both the United States House of Representatives and the United States Senate, elimination of the estate tax has wide bipartisan support;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the North Dakota Legislative Assembly urges the Congress of the United States to eliminate the estate tax; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the chairman of the United States House of Representatives Ways and Means Committee, the chairman of the United States Senate Finance Committee, and to each member of the North Dakota Congressional Delegation.

Filed March 18, 2003

CHAPTER 614**HOUSE CONCURRENT RESOLUTION NO. 3044**

(Representatives Carlson, Belter, Timm)

**ECONOMIC GROWTH AND TAX RELIEF PLAN
ENACTMENT URGED**

A concurrent resolution urging Congress to enact the President's 2002 economic growth and tax relief plan.

WHEREAS, President George W. Bush has proposed an economic growth and tax relief plan designed to strengthen the American economy and deliver critical help to unemployed citizens; and

WHEREAS, President Bush's plan removes the double taxation on dividends, speeds up tax cuts already passed in 2001, increases business expensing, and helps unemployed workers in order to speed up economic recovery and encourage job creation; and

WHEREAS, over 50 percent of the population invests in the stock market and senior citizens receive 50 percent of dividend payments, and a strong stock market benefits all Americans; and

WHEREAS, everyone who invests in the stock market and receives dividend income, especially senior citizens, will benefit from the elimination of the double taxation on dividends; and

WHEREAS, everyone who pays taxes, especially middle-income Americans, will receive additional relief by the accelerated reduction of the marriage penalty tax, a faster increase in the child tax credit, and the immediate implementation of the new, lower 10 percent tax bracket; and

WHEREAS, every small business owner who purchases equipment will benefit greatly from the increase in expensing limits from \$25,000 to \$75,000, which in turn will help grow business, allow for reinvestment of capital into the economy, and create jobs;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the North Dakota Legislative Assembly urges the Congress of the United States to enact the President's 2002 economic growth and tax relief plan; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the chairman of the United States House of Representatives Ways and Means Committee, the chairman of the United States Senate Finance Committee, and to each member of the North Dakota Congressional Delegation.

Filed March 12, 2003

CHAPTER 615**HOUSE CONCURRENT RESOLUTION NO. 3048**

(Representatives Boucher, Glassheim)
(Senators Every, O'Connell)

**THEODORE ROOSEVELT PRESIDENCY CENTENNIAL
CELEBRATED**

A concurrent resolution celebrating the one-hundredth anniversary of Theodore Roosevelt's election as President of the United States.

WHEREAS, after the death of his wife and mother in 1883, Theodore Roosevelt spent several years almost exclusively in North Dakota enjoying the strenuous life of ranching in the Badlands; and

WHEREAS, in addition to holding elected office as New York State Assemblyman, Governor of New York, and Vice President of the United States, he was also a deputy sheriff in the Dakota Territory, New York City Police Commissioner, United States Civil Service Commissioner, Assistant Secretary of the Navy, and Colonel of the Roughriders, all by the age of 42; and

WHEREAS, in 1904 Theodore Roosevelt was elected President of the United States after having succeeded to the presidency as the twenty-sixth President of the United States at the age of 42, making him the youngest person to serve as President; and

WHEREAS, President Roosevelt often commented that he never would have become President had it not been for his experiences in North Dakota; and

WHEREAS, President Roosevelt went on to win the Nobel Peace Prize, start construction of the Panama Canal, establish five national parks and the first 18 national monuments, and become a pioneer in conservation and antitrust enforcement;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly establishes 2004 as an official year of celebration of the one-hundredth anniversary of the election of Theodore Roosevelt as President of the United States.

Filed March 26, 2003

CHAPTER 616**HOUSE CONCURRENT RESOLUTION NO. 3050**

(Representatives Ekstrom, N. Johnson, M. Klein)
(Senators Cook, Espegard, Heitkamp)

**WORKERS' COMPENSATION DEATH BENEFITS
STUDY**

A concurrent resolution directing the Legislative Council to study the equity of the current system for awarding workers' compensation death benefits and the feasibility and desirability of creating a death benefit investment system.

WHEREAS, as a result of injuries received in the workplace, some injured employees have permanent or long-term disabilities; and

WHEREAS, a permanent or long-term disability negatively impacts an injured employee's ability to earn a living and support that employee's family; and

WHEREAS, the cost of purchasing and maintaining life insurance is not only higher for an injured employee due to the disability, but is also less affordable due to decreased income; and

WHEREAS, it is questionable whether the state's workers' compensation system adequately addresses problems injured employees face in providing for their survivors after death; and

WHEREAS, other states, such as Washington, have created workers' compensation death benefit investment systems that address these problems;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the equity of the state's current system for awarding workers' compensation death benefits and the feasibility and desirability of creating a death benefit investment 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 Fifty-ninth Legislative Assembly.

Filed March 26, 2003

CHAPTER 617**HOUSE CONCURRENT RESOLUTION NO. 3051**

(Representatives Gulleason, Nelson, Solberg)

(Senators Grindberg, Heitkamp, Taylor)

ECONOMIC DEVELOPMENT STUDY

A concurrent resolution directing the Legislative Council to study economic development efforts associated with and including establishment of a Red River Valley business and technology development zone and methods through which programs receiving funding from the United States Department of Agriculture rural economic area partnership, empowerment zone, enterprise community, and champion community programs can be enhanced.

WHEREAS, technology zones in other states have been used to stimulate the growth of technology-based businesses and jobs by aiding in the creation of recognized clusters of new and emerging businesses; and

WHEREAS, businesses and communities in this state have received funding assistance from the United States Department of Agriculture rural economic area partnership, empowerment zone, enterprise community, and champion community programs; and

WHEREAS, establishment of technology zones such as a Red River Valley business and technology development zone and development of rural economic area partnerships and empowerment zones could provide needed economic development in the state; and

WHEREAS, enhancement of current state economic development programs is needed to assist entrepreneurs and communities in the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study economic development efforts associated with and including establishment of a Red River Valley business and technology development zone and methods through which programs receiving funding from the United States Department of Agriculture rural economic area partnership, empowerment zone, enterprise community, and champion community programs can be enhanced; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 18, 2003

CHAPTER 618**HOUSE CONCURRENT RESOLUTION NO. 3052**

(Representatives Hawken, Delmore, D. Johnson, R. Kelsch)
(Senators Cook, Flakoll)

**SCHOOL DISTRICT DATA COLLECTION AND
REPORTING STUDY**

A concurrent resolution directing the Legislative Council to study school district data collection and reporting requirements.

WHEREAS, school districts are required to collect and submit data to a variety of entities, including the superintendent of public instruction, the education standards and practices board, the state board for vocational and technical education, and the educational technology council; and

WHEREAS, the data that is to be collected and submitted affects students, staff, school operations, and specific programs; and

WHEREAS, data collection and submission requirements are expected to increase because of new federal and state education statutes and rules; and

WHEREAS, some of the data that is required is duplicative and some of the data that is required is of little value; and

WHEREAS, electronic reporting systems do not always function in a manner that allows for maximum efficiency in data collection and reporting;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study school district data collection and reporting requirements, including the complexity of the requirements, the ability of school districts to comply with the requirements, and methods for ensuring efficiency in the data collection and reporting process; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 26, 2003

CHAPTER 619**HOUSE CONCURRENT RESOLUTION NO. 3053**

(Representative Price)

(Senator J. Lee)

EMERGENCY MANAGEMENT SYSTEM STUDY

A concurrent resolution directing the Legislative Council to study the state's emergency management system, the impact of federal emergency reorganization on the state's emergency operations plan, and the emergency management preparedness of state agencies and local governments.

WHEREAS, terrorism and pestilence pose serious threats to society that may require extraordinary measures to protect the privacy, health, and safety of the citizens of this state; and

WHEREAS, the North Dakota disaster act gives the governor broad, but appropriate, powers in the event of a disaster or emergency; and

WHEREAS, the federal government is evaluating and reorganizing federal agencies to increase the national disaster readiness capability; and

WHEREAS, a review of disaster response readiness should be conducted to determine the adequacy of the state emergency management system, the impact of federal reorganization on the state's emergency operations plan, and the ability of state agencies and local governments to carry out that plan and ensure that this state is in a position to protect the health and welfare of its citizens if an extraordinary event were to occur;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the state's emergency management system, the impact of federal emergency management reorganization on the state's emergency operations plan, and the emergency management preparedness of state agencies and local governments; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed April 11, 2003

CHAPTER 620**HOUSE CONCURRENT RESOLUTION NO. 3054**

(Representative Price)
(Senator J. Lee)

PUBLIC HEALTH UNIT STUDY

A concurrent resolution directing the Legislative Council to study the state's public health unit infrastructure and the ability of the public health units to respond to public health issues, including disease and other physical health, environmental, and disaster-related issues.

WHEREAS, all counties of the state are included in one of 28 public health units; and

WHEREAS, there is a need to evaluate core services provided by the local public health units; and

WHEREAS, there is a need to assess the independent needs of each public health unit and determine the level of service that should be provided by public health units; and

WHEREAS, there is a need to evaluate and determine the human and financial resources available and the most cost-effective way of providing public health services in the state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the state's public health unit infrastructure and the ability of the public health units to respond to public health issues, including disease and other physical health, environmental, and disaster-related issues; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 26, 2003

CHAPTER 621**HOUSE CONCURRENT RESOLUTION NO. 3055**

(Representatives Mueller, DeKrey, Gulleson, Herbel, Kreidt)
(Senator Urlacher)

RURAL COMMUNITY REVITALIZATION STUDY

A concurrent resolution directing the Legislative Council to study the patterns of migration from rural to urban areas experienced by this state and by other Midwestern states and explore various opportunities for revitalizing and strengthening rural communities, including new initiatives and reforms of existing policies, so that our rural communities can attract and be home to citizens of all ages.

WHEREAS, our state's population continues to leave the rural areas in favor of urban areas; and

WHEREAS, 36.9 percent of this state's population now resides in the easternmost counties--those that border the Red River--and one out of every five North Dakotans now resides in Cass County; and

WHEREAS, during the 1990s, only six of this state's 53 counties showed any growth in population and only Benson, Burleigh, Cass, Rolette, and Sioux Counties showed any increase in children under age 18; and

WHEREAS, in order to stem the tide of migration from the rural areas of this state and create a viable future for rural communities, consideration must be given to making critical investments in rural community development; and

WHEREAS, agriculture alone cannot revitalize rural communities and nonfarm strategies for small business development must also be explored;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the patterns of migration from rural to urban areas experienced by this state and by other Midwestern states and explore various opportunities for revitalizing and strengthening rural communities, including new initiatives and reforms of existing policies, so that our rural communities can attract and be home to citizens of all ages; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed April 3, 2003

CHAPTER 622**HOUSE CONCURRENT RESOLUTION NO. 3056**

(Representatives Boucher, Devlin, Svedjan)
(Senator Mathern)

MEDICAL INSURANCE CRISIS STUDY

A concurrent resolution directing the Legislative Council to study whether this state is experiencing a medical insurance crisis that impacts the availability and affordability of liability insurance for medical providers and medical facilities, including a study of methods of improving the availability and affordability of liability insurance and the feasibility of allowing medical providers and medical facilities to participate in an insurance reserve fund managed by the North Dakota Insurance Reserve Fund or other like entity.

WHEREAS, national, regional, and local reports in the media indicate there is a medical insurance crisis in the country, region, and state; and

WHEREAS, lack of availability and affordability of medical liability insurance will negatively impact the provision of medical services within this state, including the availability of childbirth medical services and nursing homes; and

WHEREAS, states are taking a variety of approaches to address the medical insurance crisis, including insurance market interventions, tort reforms, alternative dispute resolution, and patient safety efforts; and

WHEREAS, in order to effectively address any medical insurance problem in this state in a manner that is specific to the needs of this state, it is necessary to fully understand the unique dynamics of such a problem as they may exist in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study whether this state is experiencing a medical insurance crisis that impacts the availability and affordability of liability insurance for medical providers and medical facilities, including a study of methods of improving the availability and affordability of liability insurance and the feasibility of allowing medical providers and medical facilities to participate in an insurance reserve fund managed by the North Dakota Insurance Reserve Fund or other like entity; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed April 3, 2003

CHAPTER 623**HOUSE CONCURRENT RESOLUTION NO. 3059**

(Representatives Koppelman, DeKrey, Grande, S. Kelsh, Maragos)
(Senator Dever)

SMALL CLAIMS COURT STUDY

A concurrent resolution directing the Legislative Council to study small claims court.

WHEREAS, small claims court provides inexpensive access to informal proceedings to resolve minor claims for the recovery of money or for the cancellation of an agreement; and

WHEREAS, an election by the plaintiff to proceed in small claims court is irrevocable and the plaintiff waives the right of appeal; and

WHEREAS, a defendant who elects not to remove the action from small claims court waives the right of appeal; and

WHEREAS, an appeal mechanism has been requested by the legal and business communities and by the public; and

WHEREAS, because of the restrictions on the right to appeal, many residents are bypassing small claims court because of the finality of decisions, thereby burdening the resources of district court with minor disputes;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study small claims court; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed April 4, 2003

CHAPTER 624**HOUSE CONCURRENT RESOLUTION NO. 3060**

(Representatives Weiler, Berg, Dosch)

UNEMPLOYMENT COMPENSATION SYSTEM STUDY

A concurrent resolution directing the Legislative Council to study the state's unemployment compensation system, including reserve guidelines for the unemployment trust fund, the system for ratesetting, treatment of positive balance and negative balance employers, and the feasibility and desirability of creating an unemployment compensation board.

WHEREAS, the business and employment environment in this state is directly related to growing a healthy, thriving economy and working environment; and

WHEREAS, the law addressing unemployment compensation ratesetting in North Dakota has undergone a continuing evolution over the last decade and continues to evolve; and

WHEREAS, the Workers Compensation Board of Directors is a model that may be beneficial to incorporate into the state's unemployment compensation system;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the state's unemployment compensation system, including reserve guidelines for the unemployment trust fund, the system for ratesetting, treatment of positive balance and negative balance employers, and the feasibility and desirability of creating an unemployment compensation board; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 26, 2003

CHAPTER 625**HOUSE CONCURRENT RESOLUTION NO. 3061**

(Representative Carlson)
(Senator Robinson)

ELECTRIC UTILITY TAXATION STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of enacting legislation to tax electric utility providers with a fair and uniform tax system.

WHEREAS, investor-owned electric utilities in North Dakota pay a public utility property tax on their transmission and distribution property while electric cooperatives pay land taxes and replacement property taxes including a two percent gross receipts tax and a high-voltage transmission line tax; and

WHEREAS, investor-owned electric utilities are subject to state and federal corporate income taxes; and

WHEREAS, this nonuniform system of taxation results in disparities in tax collections among the state and its political subdivisions and creates unfairness in tax burdens among electric utilities; and

WHEREAS, the Legislative Assembly established the Electric Industry Competition Committee in 1997 as a six-year statutory committee to study changes in the electric utility industry; and

WHEREAS, the Electric Industry Competition Committee focused much of its study on developing a fair and uniform tax system applicable to both investor-owned utilities and electric cooperatives; and

WHEREAS, the Electric Industry Competition Committee gathered industry statistics and worked extensively with representatives of the electric utility industry in fashioning tax replacement plans; and

WHEREAS, the statute creating the Electric Industry Competition Committee expires on August 1, 2003;

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 enacting legislation to tax electric utility providers with a fair and uniform tax 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 Fifty-ninth Legislative Assembly.

Filed April 11, 2003

CHAPTER 626**HOUSE CONCURRENT RESOLUTION NO. 3062**

(Representative Sandvig)

VULNERABLE ADULT ABUSE AND NEGLECT STUDY

A concurrent resolution directing the Legislative Council to study vulnerable adult abuse and neglect with an emphasis on whether certain individuals should be required to report suspected incidents of vulnerable adult abuse and neglect.

WHEREAS, adults with a substantial mental or functional impairment may be so vulnerable that they may not be able to protect themselves and may become targets of abuse, neglect, or exploitation; and

WHEREAS, adult abuse can happen in a variety of settings and in a variety of ways, including physical, emotional, financial, sexual, or be related to neglect; and

WHEREAS, the adult protective services program within the Department of Human Services provides protective services to vulnerable adults; and

WHEREAS, while North Dakota law requires certain individuals to report suspected child abuse and neglect, North Dakota Century Code Section 50-25.2-03 merely provides that an individual who suspects that a vulnerable adult is being abused or neglected may report the information to the Department of Human Services or an appropriate law enforcement agency; and

WHEREAS, requiring certain individuals to report suspected abuse or neglect may help reduce the incidents of abuse and neglect among vulnerable adults;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study vulnerable adult abuse and neglect with an emphasis on whether certain individuals should be required to report suspected incidents of vulnerable adult abuse and neglect; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 26, 2003

CHAPTER 627**HOUSE CONCURRENT RESOLUTION NO. 3063**

(Representative S. Kelsh)

EMERGING LEADERS EXCHANGE PROGRAM STUDY

A concurrent resolution directing the Legislative Council to study the feasibility and desirability of establishing an exchange program for emerging leaders.

WHEREAS, various organizations including the National Conference of State Legislatures and the State Legislative Leaders Foundation have established exchange programs through which leaders from this country and other countries have shared ideas to help create well-informed legislative bodies; and

WHEREAS, exchange programs provide the opportunity for emerging leaders in business and government to interact and share policy concerns and solutions with emerging leaders in other states and countries; and

WHEREAS, exchange programs for emerging leaders in the public and private sector offer a variety of perspectives on public policy development;

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 an exchange program for emerging leaders; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed April 3, 2003

CHAPTER 628**HOUSE CONCURRENT RESOLUTION NO. 3064**

(Representatives Mueller, Delmore, Gulleson, Maragos)
(Senators Espegard, Fischer)

REMOTE-CONTROLLED LOCOMOTIVES STUDY

A concurrent resolution directing the Legislative Council to study the use of remote-controlled locomotives and related safety and security.

WHEREAS, railroads have safety and security concerns especially when crossing highways, going over or around rivers and other public water supplies, and traveling through areas populated with residents of this state; and

WHEREAS, railroad equipment may present a significant danger to persons and property from collision, derailment, and release of hazardous materials and the cause of this danger may be intentional through deliberate acts or unintentional; and

WHEREAS, there may need to be requirements that a railroad operating a remote-controlled locomotive notify the appropriate city official before entering the city, follow established criteria for the safe transport and switching of hazardous materials, have quality assurance regarding training and adequacy of operators of remote-controlled locomotives that develop the appropriate skills needed for safe operation, and follow established criteria for effective and reliable protection and security of remote-controlled locomotives at any location accessible to the general public;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the use of remote-controlled locomotives and related safety and security; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 26, 2003

CHAPTER 629**HOUSE CONCURRENT RESOLUTION NO. 3072**

(Representatives Glassheim, Drovdal, Ekstrom, Keiser, Tieman, Warner)

POPULATION GROWTH ENHANCEMENT STUDY

A concurrent resolution directing the Legislative Council to study possible methods of growing North Dakota's population, including approaches to decreasing outmigration and increasing in-migration and reviewing how other states are dealing with related population issues.

WHEREAS, over the past 10 years North Dakota has experienced a population growth rate of one-half of one percent, which is the lowest growth rate in the nation and is substantially less than the growth rate of neighboring states; and

WHEREAS, the average age of all North Dakotans is continuing to increase, resulting in a reduction in the available workforce in the state; and

WHEREAS, not only is the state's population below the level necessary to sustain adequate funding for schools, rural health, emergency care, infrastructure, and other essential services, but these problems are even more severe in the rural areas of the state; and

WHEREAS, the Minneapolis-St. Paul urban center is projected to grow by 680,000 people over the course of the next 17 years, which could be a pool of possible recruits to move to North Dakota;

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, including approaches to decreasing outmigration and increasing in-migration and reviewing how other states are dealing with related population issues; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 26, 2003

CHAPTER 630**HOUSE CONCURRENT RESOLUTION NO. 3073**

(Representatives Glassheim, Aarsvold, DeKrey, Keiser, Severson)

TAX PREFERENCES EFFECTIVENESS STUDY

A concurrent resolution directing the Legislative Council to study the effectiveness and appropriateness of tax preferences provided by state law and discretionary action of political subdivisions.

WHEREAS, tax preferences in the form of exemptions, deductions, reductions, credits, and other forms of preferential treatment are provided by numerous provisions of state laws; and

WHEREAS, no agency of state government is specifically charged with responsibility for monitoring the appropriateness and effectiveness of tax credits in producing the results intended by the Legislative Assembly; and

WHEREAS, the state of North Dakota and North Dakota political subdivisions have a substantial stake in assuring the effectiveness and appropriateness of tax preferences because of the substantial loss of tax revenues associated with tax preferences; and

WHEREAS, the expressed intent of the Legislative Assembly in creating many tax preferences is that incentives will lead to increased economic activity which in turn will lead to increased tax collections to offset the effect of the tax preference and it is the responsibility of the Legislative Assembly to ensure that its intent in this regard is being realized;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study the effectiveness and appropriateness of tax preferences provided by state law and discretionary action of political subdivisions; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 26, 2003

CHAPTER 631**HOUSE CONCURRENT RESOLUTION NO. 3075**

(Representatives Galvin, Kreidt)

MINE BOND RELEASE STUDY

A concurrent resolution directing the Legislative Council to study and identify federal and state statutory and regulatory policies that discourage or prevent final bond release applications from being filed and study and identify Public Service Commission regulatory policies that could be implemented to encourage flexibility in proving reclamation success and reducing administrative and regulatory burdens necessary for bond release applications and study and identify actions being undertaken by the mining companies to achieve final bond release.

WHEREAS, there are approximately 50,000 acres of disturbed land under mining permits in this state and there is a 10-year statutory period once mining and initial reclamation are completed before final bond release can be achieved; and

WHEREAS, the Public Service Commission estimates that there may be between 8,000 and 10,000 acres of land that have been reclaimed for 10 years but for which no related final bond release requests by mining companies have been filed with the Public Service Commission; and

WHEREAS, the mining companies, regulatory agencies, and farmers and ranchers have mutual interests in obtaining timely bond release; and

WHEREAS, there are circumstances in which the land has been reclaimed for 10 years and is in full agricultural production where mining companies have not applied for final bond release due to the irregular shape of tracts, proximity to active operations, need for future access, and safety concerns for the landowners or tenants;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Legislative Council study and identify federal and state statutory and regulatory policies that discourage or prevent final bond release applications from being filed and study and identify Public Service Commission regulatory policies that could be implemented to encourage flexibility in proving reclamation success and reducing administrative and regulatory burdens necessary for bond release applications; and study and identify activities being undertaken by the mining companies to achieve final bond release; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 26, 2003

CHAPTER 632**HOUSE CONCURRENT RESOLUTION NO. 3076**

(Representatives R. Kelsch, Price)

(Approved by the Delayed Bills Committee)

HEAD START RECOGNITION AND FUNDING URGED

A concurrent resolution urging Congress to recognize the meritorious aspects and the successes of the Head Start program, maintain funding at the highest possible level, and reject any proposal to move Head Start from the Department of Health and Human Services to the Department of Education or to limit the scope of Head Start.

WHEREAS, Head Start is a 38-year-old federally funded program charged with preparing poverty-level preschoolers for elementary school; and

WHEREAS, Head Start also sends children to the dentist, the doctor, or the mental health professional and provides case management services as well as general educational development and parenting classes for families that live well below the federal poverty level; and

WHEREAS, Head Start has been overseen by the Department of Health and Human Services since 1965; and

WHEREAS, the President has proposed moving the program to the Department of Education and changing the focus of the program to one that promotes literacy; and

WHEREAS, the President's proposal is designed to place governors in charge of setting standards for teacher qualifications and instruction and determining which programs can receive Head Start money; and

WHEREAS, although the President's proposal is designed to allow states to increase all-day Head Start classes, coordinate state preschool programs with Head Start, and mesh preschool instruction with kindergarten through grade 12 curriculum, the proposal fails to recognize that Head Start is not just an early education program but a family support program and if the proposed changes are implemented, the family support aspect of Head Start will be lost; and

WHEREAS, if governors are in charge of the funding for Head Start programs, there is the possibility that the funding will be directed toward uses other than that for which it was intended especially in states facing budget deficits, resulting in cuts in prekindergarten programs and less resources going toward serving the neediest of the children;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges Congress to recognize the meritorious aspects and the successes of the Head Start program, maintain funding at the highest possible level, and reject any proposal to move Head Start from the

Department of Health and Human Services to the Department of Education or any attempt to limit the scope of the Head Start program; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the President, the Secretary of Health and Human Services, the Secretary of Education, and to each member of the North Dakota Congressional Delegation.

Filed April 3, 2003

CHAPTER 633**HOUSE CONCURRENT RESOLUTION NO. 3077**

(Representatives Belter, Berg, Carlson)
(Senators Freborg, Nething, Stenehjem)
(Approved by the Delayed Bills Committee)

MIGUEL ESTRADA SUPPORT URGED

A concurrent resolution urging the United States Senators for the state of North Dakota to support the floor vote and nomination of judicial nominee Miguel Estrada.

WHEREAS, on May 9, 2001, the President nominated Miguel A. Estrada to fill a vacancy on the United States Court of Appeals from the District of Columbia Circuit; and

WHEREAS, Mr. Estrada's credentials are uncontested, beginning with his mastery of the English language and American culture upon his arrival to the United States as an immigrant from Honduras, and his graduation magna cum laude from Columbia University and Harvard Law School; and

WHEREAS, Mr. Estrada has received support from liberal and conservative colleagues alike who attest that he is one of the most brilliant and effective appellate lawyers in the country; and

WHEREAS, organizations who support Mr. Estrada include the League of United Latin American Citizens; United States Hispanic Chamber of Commerce; Hispanic National Bar Association; Hispanic Business Roundtable; and the Latino Coalition; and

WHEREAS, Mr. Estrada would be the first Hispanic in the country to sit on the United States Court of Appeals District of Columbia Circuit, an important and prestigious position within the nations' Court of Appeals; and

WHEREAS, after the Senate Judiciary Committee issued a favorable report to the United States Senate, over a year-and-a-half has passed without a vote on the Senate floor because of partisan politics, including a filibuster by Democratic Senators;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the United States Senators for the State of North Dakota to support the floor vote and nomination of the judicial nominee Miguel Estrada; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the United States Senators for the state of North Dakota.

CHAPTER 634**HOUSE CONCURRENT RESOLUTION NO. 3078**

(Representatives D. Johnson, Nicholas)

(Senator Traynor)

(Approved by the Delayed Bills Committee)

**DEVILS LAKE PROPERTY OWNER REIMBURSEMENT
URGED**

A concurrent resolution urging Congress to appropriate sufficient funds to reimburse property owners for land inundated by Devils Lake, reimburse the city of Devils Lake for municipal water lines inundated by Devils Lake, and to provide funding for a state outlet from Devils Lake.

WHEREAS, business owners and homeowners adversely impacted by the rising flood waters of Devils Lake were able to use flood insurance proceeds and Federal Emergency Management Agency funds to relocate their homes and businesses; and

WHEREAS, property owners, including farmers and ranchers, that have been adversely impacted by the rising flood waters of Devils Lake have not received funds to reimburse them for their losses; and

WHEREAS, at least seven miles of a pipeline that supplies municipal drinking water to the city of Devils Lake has been inundated by the rising flood waters of Devils Lake making it impossible to service the pipeline which jeopardizes the drinking water supply for the city of Devils Lake; and

WHEREAS, the city of Devils Lake is being challenged to meet stricter drinking water standards for arsenic; and

WHEREAS, obtaining a new and reliable source of drinking water for the city of Devils Lake may cost as much as \$30 million; and

WHEREAS, the United States Army Corp of Engineers has released its plans for a federal outlet to Devils Lake but the cost of constructing the federal outlet has increased dramatically; and

WHEREAS, it would be more economically feasible for the federal government to fund the state outlet;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges Congress to appropriate sufficient funds to reimburse property owners for land inundated by Devils Lake, reimburse the city of Devils Lake for municipal water lines inundated by Devils Lake, and to provide funding for a state outlet from Devils Lake; 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 April 15, 2003

CHAPTER 635**HOUSE CONCURRENT RESOLUTION NO. 3079**

(Representatives Monson, R. Kelsch, Skarphol)
(Senators Freborg, Holmberg, Robinson)
(Approved by the Delayed Bills Committee)

E-RATE PROGRAM CONTINUATION URGED

A concurrent resolution urging Congress to continue the Schools and Libraries Universal Service Support Mechanism, more commonly known as the e-rate program.

WHEREAS, Congress has provided for the creation of the Schools and Libraries Universal Service Support Mechanism to ensure that all eligible schools and libraries in the United States have affordable access to modern telecommunications and information services; and

WHEREAS, the citizens of the state of North Dakota are assessed federal universal service fees to support the Schools and Libraries Universal Service Support Mechanism; and

WHEREAS, the state of North Dakota receives approximately \$2 million per year to assist with the kindergarten through grade 12 operation of the state's wide area network, and schools and libraries in the state receive approximately \$2 million per year to assist with information technology activities;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the Congress of the United States to continue the Schools and Libraries Universal Service Support Mechanism, more commonly known as the e-rate program; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the United States Senate and House of Representatives minority and majority leaders and to each member of the North Dakota Congressional Delegation.

Filed April 15, 2003

HOUSE MEMORIAL RESOLUTION

CHAPTER 663

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:

Bernie Anderson, who served in the 45th Legislative Assembly, from District 27, died February 20, 2003;

Charles C. Anderson, who served in the 47th through the 49th Legislative Assemblies, from District 7, died September 21, 2001;

Frank Bassingthwaite, who served in the 36th and 37th Legislative Assemblies, from District 18, died January 2, 2002;

Reuel E. Harrison, who served in the 39th Legislative Assembly, from District 23, died March 19, 2002;

Weldon Haugen, who served in the 31st Legislative Assembly, from District 46, died March 20, 2002;

LeRoy "Roy" Hausauer, who served in the 42nd through the 55th Legislative Assemblies, from District 25, died September 24, 2002;

Ruth E. Holm, who served in the 53rd and 54th Legislative Assemblies, from District 21, died July 31, 2002;

John M. Howard, who served in the 51st and 52nd Legislative Assemblies, from District 14, and in the 53rd and 54th Legislative Assemblies, from District 29, died February 5, 2002;

Karnes Johnson, who served in the 39th through the 44th Legislative Assemblies, from District 39, died July 27, 2002;

Ray Juhola, who served in the 27th Legislative Assembly, from District 26, died February 24, 2001;

Doug Payne, who served in the 49th through the 52nd Legislative Assemblies, from District 51, and in the 53rd and 54th Legislative Assemblies, from District 11, died November 28, 2001;

Dave Robinson, who served in the 32nd Legislative Assembly, from District 46, died September 15, 2001; 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 17, 2003

SENATE CONCURRENT RESOLUTIONS

CHAPTER 636

SENATE CONCURRENT RESOLUTION NO. 4001

(Legislative Council)
(Budget Committee on Government Administration)

HUMAN SERVICE CENTER STUDY

A concurrent resolution directing the Legislative Council to study the delivery of services and the cost versus benefit of those services provided by the eight human service centers, consider the possibility of combining service centers and the administrative costs of the centers related to the programs and clients served, and study third-party reimbursement and competition with private providers.

WHEREAS, the 57th Legislative Assembly appropriated in excess of \$100 million for human service center operations for the 2001-03 biennium; and

WHEREAS, each human service center serves a specific demographic, geographic, and economic area of the state; and

WHEREAS, the needs of clients and service priorities are similar among human service centers; and

WHEREAS, human service centers accept third-party private reimbursement and compete against private providers for the same services and clients; and

WHEREAS, the human service centers currently share administrators;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the delivery of services and the cost versus benefit of those services provided by the eight human service centers, consider the possibility of combining service centers and the administrative costs of the centers related to the programs and clients served, and study third-party reimbursements and competition with the private 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 Fifty-ninth Legislative Assembly.

Filed April 11, 2003

CHAPTER 637**SENATE CONCURRENT RESOLUTION NO. 4002**

(Legislative Council)
(Judiciary B Committee)

**ELK DEPREDAATION DAMAGE REIMBURSEMENT
URGED**

A concurrent resolution urging Congress to pay for depredation, personal injury damage, and property damage caused by elk that move from the Theodore Roosevelt National Park.

WHEREAS, in 1985 the National Park Service brought 47 elk to this state and located the elk in the south unit of the Theodore Roosevelt National Park; and

WHEREAS, in 1999 the North Dakota Game and Fish Department counted a total of 410 elk in the Theodore Roosevelt National Park; and

WHEREAS, the high number and nature of elk within the park results in elk, especially bull elk, leaving the park; and

WHEREAS, elk cause severe depredation to planted crops and stored feed of the agricultural producers in close proximity to the park; and

WHEREAS, elk may be involved in motor vehicle crashes injuring people and property; and

WHEREAS, elk that leave the Theodore Roosevelt National Park can be identified by ear tags, microchips, and other means;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the Congress of the United States to pay for depredation, personal injury damage, and property damage caused by elk that move from the Theodore Roosevelt National Park; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution, by certified mail with return receipt, to the director of the National Park Service, the Secretary of the Department of the Interior, and to each member of the North Dakota Congressional Delegation.

Filed March 18, 2003

CHAPTER 638**SENATE CONCURRENT RESOLUTION NO. 4003**

(Senators Stenehjem, O'Connell)
(Representatives Berg, Boucher)

TEX HALL AND INDIAN LEADERS COMMENDED

A concurrent resolution welcoming Chairman Tex Hall of the Three Affiliated Tribes to the North Dakota Legislative Assembly and to commend Chairman Hall and the leaders of all American Indian people in North Dakota for their work to improve our state.

WHEREAS, members of the Fifty-eighth Legislative Assembly wish to improve North Dakota's relationship and cooperation with the sovereign Indian tribes of our great state; and

WHEREAS, the Legislative Assembly has worked to promote job creation and generate a more dynamic economy for American Indian people in North Dakota; and

WHEREAS, the Mandan, Hidatsa, and Arikara Nation, Turtle Mountain Band of Chippewa, Spirit Lake Nation, Standing Rock Nation, and Sisseton-Wahpeton Sioux Tribe share a common destiny with all citizens of the state of North Dakota; and

WHEREAS, like all leaders in service to citizens, tribal leaders have worked to improve economic opportunities, education, and health care for American Indian people; and

WHEREAS, Chairman Hall is an enrolled member of the Mandan, Hidatsa, and Arikara Nation and has been elected chairman of the Three Affiliated Tribes; and

WHEREAS, Chairman Hall has distinguished himself as a national leader and advocate for American Indian people as President of the National Congress of American Indians; and

WHEREAS, Chairman Hall will address the members of the Fifty-eighth Legislative Assembly in a joint session on Thursday, January 9, 2003, to report on the important relationship between the state of North Dakota and the tribal governments of North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly welcomes Chairman Tex Hall of the Three Affiliated Tribes and thanks Chairman Hall and all leaders of the American Indian people of North Dakota for their work to improve our state; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Tribal Business Council of the Mandan, Hidatsa, and Arikara Nation; to the Tribal Council of the Turtle Mountain Band of Chippewa; to the Tribal Council of the Spirit Lake Nation; to the Tribal Council of the Standing Rock Sioux; and to the Tribal Council of the Sisseton-Wahpeton Sioux Tribe.

Filed January 14, 2003

CHAPTER 639**SENATE CONCURRENT RESOLUTION NO. 4005**

(Senators Krauter, Erbele, Urlacher)
(Representative Kerzman)

**PRODUCTION INSURANCE IMPLEMENTATION
URGED**

A concurrent resolution urging the United States Secretary of Agriculture to implement a cost of production insurance pilot program.

WHEREAS, cost of production insurance is a concept that allows producers of program and specialty crops to insure between 70 and 90 percent of their documented variable costs of production; and

WHEREAS, cost of production insurance would greatly enhance each producer's ability to survive natural disasters and economic crises; and

WHEREAS, cost of production insurance would significantly limit the federal government's budget exposure for agricultural losses; and

WHEREAS, the United States Department of Agriculture's Risk Management Agency has received a proposal for implementation of a cost of production insurance pilot program but has not yet implemented such a program; and

WHEREAS, in its initial phase, a cost of production insurance pilot program would cover commodities such as almonds, apricots, corn, cotton, cranberries, nectarines, onions, peaches, rice, soybeans, sugarcane, and wheat;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the United States Secretary of Agriculture to implement a cost of production insurance pilot program; 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, and to each member of the North Dakota Congressional Delegation.

Filed April 2, 2003

CHAPTER 640**SENATE CONCURRENT RESOLUTION NO. 4006**

(Senators Christmann, Erbele, G. Lee)
(Representatives Grosz, Haas, Pietsch)

DOLLARS FOR SCHOLARS PROGRAM COMMENDED

A concurrent resolution commending the volunteers and staff of the Dollars for Scholars program for being selected to establish a state office and commending the 7,500 young North Dakota scholarship recipients for their hard work and dedication to the pursuit of education.

WHEREAS, North Dakota citizens value postsecondary education and are supportive of young people who seek to obtain a postsecondary education; and

WHEREAS, the rising cost of postsecondary education makes it difficult for many families to finance such a pursuit; and

WHEREAS, the Dollars for Scholars organization is committed to creating local scholarship opportunities for the students of this state and promoting private sector scholarships; and

WHEREAS, there are 63 Dollars for Scholars chapters serving 120 North Dakota communities which have already raised over \$8.6 million and awarded more than 7,500 scholarships to North Dakota students; and

WHEREAS, during the 2001-02 school year, the Dollars for Scholars chapters in this state awarded over \$801,000 to North Dakota students; and

WHEREAS, the national office of the Dollars for Scholars program has selected North Dakota as a recipient of funds with which to organize a state Dollars for Scholars office; and

WHEREAS, a state office will aid in strengthening the existing programs and in developing new chapters dedicated to awarding scholarships to our students; and

WHEREAS, the national Dollars for Scholars program has been rated one of the top education charities by Smart Money magazine for five years in a row;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Assembly commends the volunteers and staff of the Dollars for Scholars program for being selected to establish a state office and commends the 7,500 young North Dakota scholarship recipients for their hard work and dedication to the pursuit of education; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the national office of Dollars for Scholars and to the director of the North Dakota Dollars for Scholars program.

CHAPTER 641

SENATE CONCURRENT RESOLUTION NO. 4008

(Senators Fischer, J. Lee, Mathern)
(Representatives Hanson, Mueller, Zaiser)

GUARDIANSHIP STUDY

A concurrent resolution directing the Legislative Council to study the need for guardianship services, standards and practices for guardians, and funding for programs for individuals with mental illness, vulnerable elderly individuals, and individuals with traumatic brain injuries.

WHEREAS, guardians provide an essential service for incapacitated individuals; and

WHEREAS, the behavior of guardians needs to be at a high standard to protect these incapacitated individuals; and

WHEREAS, the need for guardianship services for incapacitated individuals is unknown and the need appears not to be met; and

WHEREAS, the needs of individuals with mental illness, traumatic brain injury, and the elderly may require funding for programs to increase their quality of life, including their protection through guardianship services;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the need for guardianship services, standards and practices for guardians, and funding for programs for individuals with mental illness, vulnerable elderly individuals, and individuals with traumatic brain injuries; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed April 2, 2003

CHAPTER 642**SENATE CONCURRENT RESOLUTION NO. 4009**

(Senators Krauter, Nichols, Urlacher)
(Representatives Mueller, Nicholas)

**CONSERVATION SECURITY PROGRAM
IMPLEMENTATION URGED**

A concurrent resolution urging the United States Department of Agriculture to fully implement the conservation security program of the 2002 Farm Security and Rural Investment Act in order to assist farmers with the cost of conserving vital agricultural resources.

WHEREAS, the 2002 Farm Security and Rural Investment Act established the conservation security program; and

WHEREAS, the purpose of the conservation security program is to assist producers of agricultural operations in promoting conservation and improving the quality of soil, water, air, and plant and animal life; and

WHEREAS, the conservation security program covers the costs of adopting new management, vegetation, and land-based structural practices, as well as costs for maintaining existing land management and vegetative practices; and

WHEREAS, the conservation security program will reward farmers who are already doing a good job of conserving their farmland and will provide incentives for implementing new practices that will further improve land stewardship; and

WHEREAS, enrollment by farmers, ranchers, and landowners in the conservation security program was anticipated to deliver \$2 billion over 10 years as scored by the congressional budget office; and

WHEREAS, concern exists over the potential for the Congress to renege on its earlier spending commitment for the conservation security program; and

WHEREAS, the conservation security program was designed as a national program available to all producers;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the United States Department of Agriculture to fully implement the conservation security program of the 2002 Farm Security and Rural Investment Act in order to assist farmers with the cost of conserving vital agricultural resources; 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, and to each member of the North Dakota Congressional Delegation.

CHAPTER 643**SENATE CONCURRENT RESOLUTION NO. 4010**

(Senators Klein, Nichols, Taylor)
(Representatives Brusegaard, Weisz)

**COST OF PRODUCTION INSURANCE FUNDING
URGED**

A concurrent resolution urging Congress to adequately fund and the Secretary of Agriculture to expeditiously implement and expand whole-farm cost of production insurance that is based on a producer's actual production cost history.

WHEREAS, North Dakota is second among states in the use of federal crop insurance products; and

WHEREAS, North Dakota has experienced several consecutive years of natural disasters that have reduced actual production history; and

WHEREAS, many producers have found that their level of coverage has eroded or is unavailable as a result of consecutive years of natural disasters; and

WHEREAS, the current federal crop insurance system, which relies upon production units, price history, and yield history, has been subject to both fraud and abuse; and

WHEREAS, many producers and lending institutions require more coverage and reliability than can be provided by existing federal crop insurance products and ad hoc disaster spending to cover production costs in the event of catastrophic natural disasters; and

WHEREAS, the taxpayers of this state and country deserve a more fiscally responsible plan than off-budget emergency spending to deal with catastrophic agricultural losses;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the Congress of the United States to adequately fund and the Secretary of Agriculture to expeditiously implement and expand whole-farm cost of production insurance that is based on a producer's actual production cost history; 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, and to each member of the North Dakota Congressional Delegation.

Filed April 11, 2003

CHAPTER 644**SENATE CONCURRENT RESOLUTION NO. 4011**

(Senator Trenbeath)

MOTOR VEHICLE LIEN STUDY

A concurrent resolution directing the Legislative Council to study alternative methods for recording and discharging a lien on a motor vehicle.

WHEREAS, it is the legislative responsibility to review existing laws to ensure that laws address the problems the laws are intended to rectify; and

WHEREAS, current state law regarding the procedures for recording and discharging a lien on a motor vehicle have not changed in more than thirty years; and

WHEREAS, specific requirements for the recording and discharging of a lien on a motor vehicle are provided in state law; and

WHEREAS, North Dakota citizens and the Department of Transportation have previously experienced problems when a lien on a motor vehicle is not properly recorded or discharged; and

WHEREAS, new technologies exist that simplify the procedures and requirements related to recording and discharging a lien on motor vehicles;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the requirements for recording and discharging a lien on a motor vehicle and the desirability of adopting laws that provide alternative methods to recording and discharging a lien on a motor vehicle; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 18, 2003

CHAPTER 645**SENATE CONCURRENT RESOLUTION NO. 4014**

(Senators Kringstad, Every, Lyson)
(Representatives Carlisle, Wrangham)

LAW ENFORCEMENT TRAINING FUNDING STUDY

A concurrent resolution directing the Legislative Council to study methods for funding and providing law enforcement training in this state.

WHEREAS, law enforcement training is critical in providing effective law enforcement service to the people of North Dakota; and

WHEREAS, funding for this critical training has been difficult to maintain because of budget constraints at the federal, state, and local levels; and

WHEREAS, there is a need to determine the most cost-effective ways of providing this training so that the safety of law enforcement personnel and the public can be preserved;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study methods for funding and providing law enforcement training in this state; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 25, 2003

CHAPTER 646**SENATE CONCURRENT RESOLUTION NO. 4016**

(Senator Nichols)

SEED COMMISSIONER AND DEPARTMENT STUDY

A concurrent resolution directing the Legislative Council to study those provisions of North Dakota Century Code Title 4 which relate to the powers and duties of the State Seed Commissioner and the State Seed Department.

WHEREAS, many of the laws relating to powers and duties of the State Seed Commissioner and the State Seed Department have been adopted over the years without regard to their interrelationship; and

WHEREAS, many of the laws relating to the powers and duties of the Seed Commissioner and the Seed Department set forth neither clear objectives nor directives for their administration; and

WHEREAS, many of the laws relating to powers and duties of the Seed Commissioner and the Seed Department are duplicative, inconsistent, illogically arranged, unclear in their intent and direction, and inapplicable to the manner in which agriculture is conducted in the 21st century;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study those provisions of North Dakota Century Code Title 4 which relate to the powers and duties of the State Seed Commissioner and the State Seed Department; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed April 2, 2003

CHAPTER 647**SENATE CONCURRENT RESOLUTION NO. 4018**

(Senators Klein, Andrist, Flakoll, O'Connell)

(Representatives Pollert, Severson)

**NORTH DAKOTA FOOD PRODUCTS PURCHASE
URGED**

A concurrent resolution urging all publicly supported entities having food acquisition functions to support North Dakota producers and processors through the purchase of food products grown or produced and processed in this state.

WHEREAS, North Dakota is home to many value-added agricultural food product processing facilities that have the potential to become economic growth engines for this state; and

WHEREAS, North Dakota-produced food is valued for its wholesomeness and nutritional value; and

WHEREAS, all North Dakotans should proudly showcase all the foods grown or produced in this state and all the foods processed in this state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges all publicly supported entities having food acquisition functions to support North Dakota producers and processors through the purchase of food products grown or produced and processed in this state; and

BE IT FURTHER RESOLVED, that the Office of Management and Budget is urged to compile a list of all food processors in this state that utilize and have a sales and distribution network for North Dakota grown or processed products and to distribute that list to all publicly supported entities having food acquisition functions, including the North Dakota University System and the school districts of this state; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to all food processors in this state and the Office of Management and Budget.

Filed April 3, 2003

CHAPTER 648**SENATE CONCURRENT RESOLUTION NO. 4019**

(Senators Kringstad, Dever, Tallackson)
(Representatives Delzer, Norland)

CONSUMER REPORT INFORMATION STUDY

A concurrent resolution directing the Legislative Council to study actions that can be taken at the state level to address the problem of inaccurate or obsolete information on consumer reports.

WHEREAS, inaccurate or obsolete negative information on a consumer report has a broad sweeping impact on consumers, including credit denial, unfavorable credit terms, increased insurance premiums, and denied housing; and

WHEREAS, the federal Fair Credit Reporting Act addresses consumer reporting agencies, consumer reports, procedures for disputing accuracy of information of a consumer report, and requirements relating to information contained in consumer reports; and

WHEREAS, Section 624 of the federal Fair Credit Reporting Act expressly provides how the federal act relates to state laws; and

WHEREAS, indepth research is required to determine whether state laws can legally and effectively address this problem of inaccurate or obsolete negative information on consumer reports;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study actions that can be taken at the state level to address the problem of inaccurate or obsolete information on consumer reports; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 25, 2003

CHAPTER 649**SENATE CONCURRENT RESOLUTION NO. 4020**

(Senators Dever, Krebsbach, G. Lee)
(Representatives Dosch, M. Klein, Meier)

COLLEGE INTERNSHIPS URGED

A concurrent resolution encouraging state agencies to provide college internships.

WHEREAS, state agencies are dispersed throughout this state; and

WHEREAS, internships retain young people who are the greatest promise for the future of this state; and

WHEREAS, internships are good for students because students can gain good work habits and work experience, explore possible careers in a realistic worksetting, learn while earning funds for education, apply classroom learning to realistic worksettings for academic credit, and achieve a smooth transition into full-time employment due to the experience and professional contacts gained by the student; and

WHEREAS, internships are good for the employer because interns bring ideas and talent to the workplace, the employer has an opportunity to observe potential employees before committing to full-time employment, the employer can establish a well-trained pool of potential employees, and the cost of recruiting and training new employees is reduced;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly encourages state agencies to provide college internships; and

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the head of every state agency in this state.

Filed March 19, 2003

CHAPTER 650**SENATE CONCURRENT RESOLUTION NO. 4022**

(Senator Nichols)
(Representative Onstad)

TRIBAL GAME AND FISH COORDINATION STUDY

A concurrent resolution directing the Legislative Council to study proposed legislation permitting the Game and Fish Department to coordinate with game and fish programs conducted by the tribal governments of the federally recognized Indian tribes in North Dakota.

WHEREAS, the state of North Dakota has established a game and fish department to manage the wild game and fish within the state; and

WHEREAS, the various tribal governments of the federally recognized Indian tribes within North Dakota assert a federally recognized right to regulate hunting and fishing within the reservations set aside for their benefit and have also established game and fish departments that assist in that regulation; and

WHEREAS, various issues have arisen between the state game and fish department and the Indian tribes regarding such issues as jurisdiction, recognition of tribal and state hunting and fishing permits, and coordination of activities such as hunting and fishing seasons, among others, and it would be desirable to resolve these issues if at all possible; and

WHEREAS, it would be mutually beneficial for the state of North Dakota and the tribal governments to work cooperatively to effectively manage the wild game and fish that exist within North Dakota;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study proposed legislation permitting the Game and Fish Department to coordinate with game and fish programs conducted by the tribal governments of the federally recognized Indian tribes 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 Fifty-ninth Legislative Assembly.

Filed April 11, 2003

CHAPTER 651**SENATE CONCURRENT RESOLUTION NO. 4023**

(Senators Stenehjem, Holmberg, J. Lee)

(Representatives Berg, Devlin, Price)

MEDICARE PRESCRIPTION DRUG BENEFIT URGED

A concurrent resolution urging the Congress to enact a Medicare prescription drug benefit.

WHEREAS, the use of prescription drugs improves the quality of care and helps patients live healthier, longer, and more productive lives while keeping them out of more costly acute care settings in the long term; and

WHEREAS, the increased use of new and improved prescription drugs has changed the delivery of health care in the United States since Medicare was enacted, and while two-thirds of the Medicare population has some form of prescription drug coverage, although many times it is inadequate, one-third of Medicare beneficiaries have no coverage at all; and

WHEREAS, Congress did not enact a drug benefit in the Medicare program therefore, the program is inadequate in providing the elderly and disabled the most appropriate drug therapies, preventing the delivery of quality health care at an affordable cost; and

WHEREAS, the private sector provides affordable coverage by negotiating discounts on drugs and meeting the needs of special populations with chronic diseases and those with comorbidities through coordinating care with disease management, drug utilization review, and patient education programs, all of which aid in ameliorating medical errors; and

WHEREAS, comprehensive reform of the Medicare program could utilize the successful tools of the private sector in coordinating care for this population and use the marketplace to foster competition among private plans, resulting in more choices of quality coverage for seniors and the disabled while maintaining the financial sustainability of the program; and

WHEREAS, Congress's inaction has failed to provide for comprehensive reform of Medicare, encouraging states to use their own resources to ease the burden of their elderly and disabled populations and effectively assume an unfunded, informal mandate; and

WHEREAS, in implementing state programs to assist the Medicare population, state budgetary constraints can often result in requirements to restrict and limit the patients' access to needed prescription drugs and enact anticompetitive price controls;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the Congress of the United States to enact financially sustainable, voluntary, universal, outpatient prescription

drug coverage with consideration for privately administered plans as part of the federal Medicare program; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Speaker of the United States House of Representatives and the President of the United States Senate and to each member of the North Dakota Congressional Delegation.

Filed April 2, 2003

CHAPTER 652**SENATE CONCURRENT RESOLUTION NO. 4024**

(Senators Fairfield, Nething)
(Representatives Hanson, Headland, Kroeber, Pollert)

DARIN ERSTAD COMMENDED

A concurrent resolution celebrating the World Series victory of Darin Erstad as a member of the Anaheim Angels baseball team.

WHEREAS, Darin Erstad was born and raised in Jamestown, North Dakota; and

WHEREAS, Darin Erstad participated in American Legion baseball while a student at Jamestown High School, batting .492 with 18 home runs for the Jamestown Eagles in 1992, and played football and hockey for Jamestown High School; and

WHEREAS, Darin Erstad was named North Dakota Athlete of the Year by the Associated Press in 1992; and

WHEREAS, Darin Erstad was named All Big Eight Conference and Big Eight Conference player of the year in baseball, named academic All Big Eight Conference for the University of Nebraska baseball team, and named academic All Big Eight Conference for the 1994 national championship University of Nebraska football team; and

WHEREAS, in addition to his skill on the baseball diamond, Darin Erstad has, especially in his support for sick and less fortunate children, demonstrated exemplary citizenship while growing up in North Dakota and while living and playing baseball in California; and

WHEREAS, Darin Erstad reached the milestone of 200 hits faster than any player in 60 years, attaining the mark in 132 games, was awarded two Gold Glove awards for his defensive play, and was named to the 1998 and 2000 American League All-Star teams; and

WHEREAS, Darin Erstad became the first person born in North Dakota to play on a World Series Championship baseball team when the Anaheim Angels won the 2002 World Series;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly congratulates Darin Erstad and his family for his victory in the 2002 baseball World Series and for his exemplary representation of the state of North Dakota and the city of Jamestown, as both baseball player and ambassador for North Dakota; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to Darin Erstad and to each member of his immediate family.

Filed March 25, 2003

CHAPTER 653**SENATE CONCURRENT RESOLUTION NO. 4025**

(Senators Bercier, Mathern)
(Representatives Boucher, Svedjan, Tieman)

WIND ENERGY PRODUCTION TAX CREDIT URGED

A concurrent resolution urging Congress to promote development of North Dakota's wind energy resource by appropriating funds to provide a two and one-half cents per kilowatt hour wind energy production tax credit.

WHEREAS, the Fifty-seventh Legislative Assembly of North Dakota enacted legislation allowing installations on property leased by a taxpayer to qualify for a long-form income tax credit for installation of a geothermal, solar, or wind energy device; and

WHEREAS, the Fifty-seventh Legislative Assembly of North Dakota also provided a sales and use tax exemption for production equipment and tangible personal property used in construction of a wind-powered electrical generating facility before January 1, 2011, if a facility has an electrical energy generation unit with a nameplate capacity of 100 kilowatts or more; and

WHEREAS, the Fifty-seventh Legislative Assembly of North Dakota reduced the taxable valuation of centrally assessed wind turbine electric generators from 10 percent of assessed value to three percent of assessed value if the generation unit has a nameplate generation capacity of 100 hundred kilowatts or more and construction is completed before January 1, 2011; and

WHEREAS, development of North Dakota's wind energy resource will benefit the national economy by providing a source of clean, renewable energy thus obviating the need for imported oil; and

WHEREAS, Congress should support development of the state's wind energy resource by appropriating funds to provide a wind energy production tax credit of up to two and one-half cents per kilowatt hour; and

WHEREAS, enactment of a wind energy production tax credit would promote the manufacturing of wind turbine towers and blades resulting in increased manufacturing of wind turbine equipment in the United States;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the Congress of the United States to promote development of North Dakota's wind energy resource by appropriating funds to provide a two and one-half cents per kilowatt hour wind energy production tax credit; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of the Department of Energy and to each member of the North Dakota Congressional Delegation.

Filed March 19, 2003

CHAPTER 654**SENATE CONCURRENT RESOLUTION NO. 4026**

(Senators Bercier, Mathern)
(Representatives Boucher, Svedjan, Tieman)

NO CHILD LEFT BEHIND FUNDING URGED

A concurrent resolution urging the President and Congress to provide sufficient funding for implementation of the No Child Left Behind Act of 2001.

WHEREAS, the No Child Left Behind Act of 2001 represents an increasing federal role in public education; and

WHEREAS, this new federal law increases the level of federal funding authorized for education and substantially increases federal requirements and oversight; and

WHEREAS, Congress has authorized an additional \$10 billion for education during the ensuing five years, but the level of funding actually appropriated has so far fallen short of the authorized level; and

WHEREAS, the cost to states of implementing the No Child Left Behind Act of 2001 is as yet unclear; and

WHEREAS, significant concern exists with respect to the ability of the President and Congress to provide the funding necessary for the states to fully implement the No Child Left Behind Act of 2001;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly urges the President and Congress of the United States to provide sufficient funding for implementation of the No Child Left Behind Act of 2001; 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 Education, and to each member of the North Dakota Congressional Delegation.

Filed March 18, 2003

CHAPTER 655**SENATE CONCURRENT RESOLUTION NO. 4029**

(Senators Robinson, Bercier)
(Representatives Boucher, Drovdal, Onstad)

INDIAN ISSUES STUDY

A concurrent resolution directing the Legislative Council to study issues relating to the Indian population of the state, including sovereignty, educational opportunities, cultural understanding, population dispersement, unemployment, health concerns, suicide rates, living conditions, and impact on the caseloads of the Department of Human Services and the Department of Corrections and Rehabilitation.

WHEREAS, five federally recognized tribes and one Indian community are located partially or in whole in the state; and

WHEREAS, according to the 2000 census, the North Dakota Indian population was 35,228 or 5.5 percent of the state's total population; and

WHEREAS, the poverty rate for Indians in North Dakota is more than three times the rate for the state; and

WHEREAS, the prevalence of diabetes is nearly three times higher among Indians than it is among white non-Hispanics and other races; and

WHEREAS, the suicide rate for Indian youth between the ages of 15 and 24 is 382 percent higher than for non-Indian youth in the state; and

WHEREAS, Indians are 7.5 times as likely to live in households without adequate sanitation facilities as the general North Dakota population; and

WHEREAS, Indian families account for approximately 57 percent of the temporary assistance for needy families caseload; and

WHEREAS, the unemployment rate on the state's Indian reservations averages 55 percent; and

WHEREAS, in 2001, of the 751 new admissions to the Department of Corrections and Rehabilitation, Indians accounted for 18 percent of the male admissions and 27 percent of the female admissions;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study issues relating to the Indian population of the state, including sovereignty, educational opportunities, cultural understanding, population dispersement, unemployment, health concerns, suicide rates, living conditions, and impact on the caseloads of the Department of Human Services and the Department of Corrections and Rehabilitation; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed April 11, 2003

CHAPTER 656**SENATE CONCURRENT RESOLUTION NO. 4030**

(Senator Trenbeath)

SNOWMOBILE AND ATV DEALER LICENSE STUDY

A concurrent resolution directing the Legislative Council to study the requirements for the registration and licensing of snowmobile and all-terrain vehicle dealers.

WHEREAS, it is the responsibility of the Legislative Assembly to review existing laws to ensure that they address the problems they are intended to rectify; and

WHEREAS, current North Dakota law does not establish specific requirements for the registration and licensing of snowmobile and all-terrain vehicle dealers; and

WHEREAS, specific requirements for the registration and licensing of other vehicle dealers are provided in North Dakota law; and

WHEREAS, North Dakota citizens and the Department of Transportation have previously experienced problems with snowmobile and all-terrain vehicle dealers who failed to deliver certificates of title or remit fees collected on behalf of customers; and

WHEREAS, the value of snowmobiles and all-terrain vehicles has increased significantly during the past few years;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the requirements for the registration and licensing of snowmobile and all-terrain vehicle dealers and the desirability of adopting laws that provide specific requirements and criteria for qualification as a snowmobile or all-terrain vehicle dealer; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 18, 2003

CHAPTER 657**SENATE CONCURRENT RESOLUTION NO. 4035**

(Senator Christenson)

**ECONOMIC DEVELOPMENT NEAR RESERVATIONS
STUDY**

A concurrent resolution directing the Legislative Council to study legislative alternatives to foster and promote economic development in areas on or near the Indian reservations in North Dakota, including rural areas near Indian reservations.

WHEREAS, the results of the decennial census of the state of North Dakota show that the fastest growing population within the state is Native Americans living within or near Indian reservations; and

WHEREAS, census results and other studies also show that the areas of the greatest concentration of poverty and unemployment in North Dakota are on or near the Indian reservations in the state and these areas of poverty and unemployment often extend to counties surrounding the reservations; and

WHEREAS, over 50 percent of all welfare recipients in the state of North Dakota are Native Americans, approximately one-third of the prison population is Native American, and the percentage of unemployed who are capable of work on the Indian reservations in North Dakota is greater than 50 percent; and

WHEREAS, various economic development efforts are being made and have been made by the federal government that will benefit Indian reservations but these efforts have not been sufficient to relieve the poor economic conditions that exist on the reservations in North Dakota; and

WHEREAS, tribal governments are also allocating a large portion of their resources toward economic development, including funds derived from lawful gaming activities conducted on the reservations, and have shown that these economic activities also assist in economic growth in nearby rural communities, but in light of population growth and the limited resources available to tribal governments, including the federal funds set aside on their behalf, the limited income and employment opportunities from gaming activities lawfully conducted in rural areas of the state and other sources of revenue and efforts at economic development, economic conditions for areas on or near reservations have only marginally improved; and

WHEREAS, the cost to the state of poor economic conditions on or near the Indian reservations is enormous, including the loss of state revenues because of low economic activity and low employment rates, the cost of welfare assistance, the cost of housing a large prison population, and the cost of other social issues associated with poverty and is probably measured in an amount in the hundreds of millions of dollars; and

WHEREAS, barriers to economic development on or near the Indian reservations and in surrounding rural areas include, among other things, lack of access to capital, lack of job training opportunities, lack of employment opportunities,

lack of incentives to invest, such as programs that would reduce or eliminate taxes for specific periods, and lack of infrastructure necessary for investment; and

WHEREAS, the state of North Dakota has already enacted various economic development proposals that largely benefit the urban areas of the state and provide some assistance to rural areas but do not target the areas with the greatest concentration of poverty within the state, namely, areas on or near Indian reservations;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study legislative proposals that would provide economic incentives or provide targeted programs with measurable outcomes that would assist in economic development on or near the Indian reservations in North Dakota and in rural areas around the reservations, including proposals that would assist tribes and tribal members to gain access to capital needed for economic development; reduce or eliminate taxes for a specific period of time; enhance the capacity of state economic development programs already in existence to be coordinated with federal programs that promote economic development for Indian reservations; enhance the capacity of the Bank of North Dakota to provide loans for economic development on or near the reservations, such as lower interest rate loans; and create programs targeted to assist individual tribal members and other rural entrepreneurs to create and expand businesses that are likely to succeed in rural areas; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-ninth Legislative Assembly.

Filed March 19, 2003

CHAPTER 658

SENATE CONCURRENT RESOLUTION NO. 4037

(Senators Klein, Erbele, Heitkamp)
(Approved by the Delayed Bills Committee)

WATER PROJECT CONSTRUCTION SUPPORT

A concurrent resolution expressing the Legislative Assembly's support for construction of the North Central Rural Water Consortium Project and the South Central Regional Water District Project.

WHEREAS, many areas and localities in central North Dakota do not enjoy safe drinking water, and the water in these areas and localities contains iron, sulfates, alkali, salt, nitrates, fluoride, and other hazardous and discoloring substances; and

WHEREAS, many areas and localities in central North Dakota do not have sufficient quantities of water to ensure a dependable, long-term supply; and

WHEREAS, a dependable supply of potable water, free from contaminants and substances as aforementioned, is instrumental to the stabilization and revitalization of the rural and sub-urban economy in central North Dakota; and

WHEREAS, the North Central Rural Water Consortium Project's goal is to address and fill the gaps existing between the numerous rural water systems currently operating in seven counties throughout central North Dakota, utilizing existing facilities to their fullest capacity to present a more feasible project, and afford all residents of the area the opportunity to be served at a more affordable cost; and

WHEREAS, the South Central Regional Water District will extend the services of the Burleigh Water Users Cooperative to address the needs of a five-county region in south central North Dakota, utilizing the Missouri River as a source of supply; and

WHEREAS, both of these projects will supply water, in areas of the state exceeding the recommended allowable levels for arsenic, in both private and public wells, thus offering a solution for the numerous small communities facing severe financial burdens to comply with the new arsenic standard thus resulting in an improved quality of life for the rural residents of these areas;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly expresses its support for construction of the North Central Rural Water Consortium and South Central Regional Water District Projects; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Governor, State Engineer, each member of the State Water Commission, and to each member of the North Dakota Congressional Delegation.

CHAPTER 659**SENATE CONCURRENT RESOLUTION NO. 4038**

(Senators Kringstad, Nelson)
(Representatives Berg, Kroeber)
(Approved by the Delayed Bills Committee)

BUCKY MAUGHAN CONGRATULATED

A concurrent resolution congratulating Bucky Maughan on election to the National Wrestling Hall of Fame.

WHEREAS, Bucky Maughan became head wrestling coach at North Dakota State University in 1964, after a brilliant collegiate wrestling career, including NAIA national championships in 1962 and 1963 and an NCAA Division I national championship in 1963; and

WHEREAS, Bucky Maughan, over 38 years, has coached the Thundering Herd to 34 consecutive winning seasons, 394 dual meet wins, nine consecutive conference titles, and 25 top five finishes at the NCAA Division II national championships, including third place six times, second place five times, and four NCAA Division II national championships; and

WHEREAS, Bucky Maughan has coached 30 individual NCAA Division II national champions and 168 NCAA Division II and Division I All-Americans, and instilled a tradition of excellence in the North Dakota State University wrestling program that is a tribute to his leadership and coaching excellence; and

WHEREAS, Bucky Maughan was selected as NCAA Division II wrestling coach of the year in 1982, 1988, and 1998, was elected to the NCAA Division II and NAIA wrestling Hall of Fame, and has been named as one of the top 10 college wrestling coaches of all time in a poll taken by Wrestling USA magazine;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Assembly expresses its pride and extends its congratulations to Bucky Maughan on election to the National Wrestling Hall of Fame; and

BE IT FURTHER RESOLVED, that the Secretary of State forward enrolled copies of this resolution to Bucky Maughan and to the president and the athletic director of North Dakota State University.

Filed April 11, 2003

CHAPTER 660

SENATE CONCURRENT RESOLUTION NO. 4039

(Senators Holmberg, Kringstad, Stenehjem)
(Representatives Delmore, Keiser, Svedjan)
(Approved by the Delayed Bills Committee)

EVAN LIPS HONORED AND CONGRATULATED

A concurrent resolution honoring former Senator Evan Lips for his countless contributions and unselfish dedication to a better North Dakota and nation and congratulating him on the naming of an auditorium at the University of North Dakota School of Medicine and Health Sciences in his honor.

WHEREAS, Evan Lips served our nation in the United States Marine Corps during World War II, and he was awarded the Legion of Merit, the Bronze Star, and the Presidential Unit Citation while serving with the Marines in the South Pacific; and

WHEREAS, Evan Lips, as a member of the University of North Dakota All-Centennial Football Team, was selected to be captain of the team, and he was named all-conference for three consecutive years; and

WHEREAS, Evan Lips epitomized the highest ideals of public service during 12 years as the mayor of Bismarck and during 38 years as a member of the Senate, where he served as Majority Leader and as chairman of the Appropriations Committee; and

WHEREAS, Evan Lips has given unselfishly of his time, talent, and resources for the benefit of others and is the recipient of numerous honors, including the Greater North Dakota Award, the Friend of Education Award, the UND Sioux Award, and, most recently, the Lifetime of Caring Award; and

WHEREAS, Evan Lips exhibited a lifelong dedication to providing quality educational opportunities for the citizens of North Dakota, including an essential role in the establishment of a four-year medical school; and

WHEREAS, the University of North Dakota has announced that on May 6, 2003, an auditorium at the University of North Dakota School of Medicine and Health Sciences will be named in honor of Evan Lips;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Assembly recognizes former Senator Evan Lips for his countless contributions and unselfish dedication to a better North Dakota and nation and congratulates him on the naming of an auditorium at the University of North Dakota School of Medicine and Health Sciences in his honor; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to former Senator Evan Lips, to the president of the University of North Dakota, and to the dean of the University of North Dakota School of Medicine and Health Sciences.

Filed April 11, 2003

CHAPTER 661**SENATE CONCURRENT RESOLUTION NO. 4040**

(Senators Stenehjem, O'Connell, Tollefson)
(Representatives Berg, Boucher, M. Klein)
(Approved by the Delayed Bills Committee)

ARMED FORCES SUPPORTED AND HONORED

A concurrent resolution supporting and honoring the personnel of the Armed Forces of the United States as they enter harm's way around the world and the families of these men and women for their support and sacrifice.

WHEREAS, the personnel of the Armed Forces of the United States are engaged in deadly combat with the forces of the Iraqi regime of President Saddam Hussein and in a greater war on terrorism around the world; and

WHEREAS, the sacrifice and honor of the personnel called to active military duty and the support and sacrifices of their families is deserving of the full measure of respect and appreciation of all North Dakotans, which should be conveyed so that the personnel called to active duty and their families have no doubt of the esteem for them in the hearts and minds of North Dakotans; and

WHEREAS, as in previous conflicts, a large number of North Dakotans are participating in war as members of the regular Armed Forces and as members of the North Dakota National Guard, so much so that North Dakota has a greater share of its population called from the reserves to active duty than any other state;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Fifty-eighth Legislative Assembly supports and honors the personnel of the Armed Forces of the United States as they enter harm's way around the world and the families of these men and women for their support and sacrifice; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to the President of the United States, the presiding officers of the United States House of Representatives and the United States Senate, the Secretary of Defense, the Secretary of State, to each member of the North Dakota Congressional Delegation, and to the Adjutant General of North Dakota.

Filed April 11, 2003

SENATE MEMORIAL RESOLUTION

CHAPTER 664

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:

Ralph J. Erickstad, who served in the 35th through the 37th Legislative Assemblies, from District 21, died July 12, 2001;

Walter R. Fiedler, who was seated on February 25, 1955, to serve out the remainder of the 34th Legislative Assembly and who continued to serve in the 35th through the 37th Legislative Assemblies, from District 46, died March 7, 2002;

John Kusler, who served in the 32nd through the 35th Legislative Assemblies, from District 48, died September 16, 2002;

John F. Maher, who served in the 44th and 45th Legislative Assemblies, from District 39, died September 15, 2001;

J. H. Mahoney, who served in the 38th and 39th Legislative Assemblies, from District 21, died September 19, 2002;

Dave M. Robinson, who served in the 38th and 39th Legislative Assemblies, from District 46, and in the 40th through the 42nd Legislative Assemblies, from District 8, died September 15, 2001;

Clarence G. Schultz, who served in the 40th through the 44th Legislative Assemblies, from District 14, died October 17, 2002;

Robert L. Stroup, who served in the 40th through the 44th Legislative Assemblies, from District 33, died October 30, 2001;

F. Kent Vosper, who served in the 44th through the 52nd Legislative Assemblies, from District 11, died February 21, 2003; 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 18, 2003

SENATE RESOLUTION

CHAPTER 662

SENATE RESOLUTION NO. 6001

(Senator Trenbeath)

(Approved by the Delayed Bills Committee)

EVERETT C. ALBERS HONORED

A resolution honoring Mr. Everett C. Albers for his unswerving devotion to bringing the humanities to the people of this state.

WHEREAS, since the inception of the North Dakota Humanities Council in 1973, the council has been an active participant in bringing the study of the humanities to the people of this state; and

WHEREAS, Mr. Albers, the longest serving executive director of a state humanities council in the United States, has served the people of this state through the North Dakota Humanities Council since the council's inception; and

WHEREAS, during his tenure, Mr. Albers has become nationally recognized for his untiring dedication to the study of the humanities and his boundless imagination in bringing programs of national scope as well as local importance to the people of this state; and

WHEREAS, Mr. Albers was instrumental in conceiving, constructing, and promoting the modern Great Plains Chautauqua, whose programs of modern scholars representing important historical figures has revived the 19th century tradition of summertime, outdoor education, discussion, and debate;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA:

That the Senate honors Mr. Everett C. Albers for his unswerving devotion to bringing the humanities to the people of this state; and

BE IT FURTHER RESOLVED, that the Secretary of State present an enrolled copy of this resolution to Mr. Everett C. Albers.

Filed March 3, 2003